

By Mr. Gallagher:

Q. And I now show you Plaintiff's Exhibit 68, Mr. von Opel, for identification, and ask if that, which appears to be a transcript of account of Geheimrat Wilhelm von Opel, and ask if that apparently reflects the transactions in General Motors stock. A. Yes, it does.

Mr. Gallagher: I now offer Plaintiff's Exhibit 68.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 68.)

627 By Mr. Gallagher:

Q. Mr. von Opel, would you not step down from the stand for a moment, and take a look at this chart, which has been identified in smaller facsimile fashion as Plaintiff's Exhibit 80, a copy of which I would like to give to His Honor, and offer.

Mr. Burling: Do I understand this is offered in evidence?

Mr. Gallagher: Yes.

Mr. Burling: I object, on the ground that it contains several errors. It does not accord with the documents.

The Court: I cannot receive it in evidence over the objection.

Mr. Gallagher: We will withdraw the offer at this time, Your Honor.

By Mr. Gallagher:

Q. Now, Mr. von Opel, in the light of the testimony which you have heretofore given, and the documents which have been introduced in evidence, will you stand at this side of this chart and point out to the Court what has happened to the Opel shares up until this time, giving dates as they appear?

Mr. Burling: Do you mean up until 1948?

Mr. Gallagher: No—up until the time we are now at in his testimony, the latter part of October, when he has transferred from his father's account to his own account the funds and securities.

628 The Witness (indicating): We are now here to this account, at the point called B.

By Mr. Gallagher:

Q. And does this chart reflect accurately where the shares have flown, that originally was to go into this account? A. Some shares in here, and some payment over to the National City Bank (indicating).

Q. And in the account originally by virtue of Plaintiff's Exhibit 4 in evidence, the funds passed through this account? Is that correct? A. Yes; that is a transfer account.

Q. And now by virtue of the notification which you gave to the bank on October 28, 1931, the funds and securities are all in or coming in to this account marked B? Is that correct? A. Yes, sir.

Q. That is all. (The witness returned to the stand.) Now, Mr. von Opel, did your father ever, at any time then or from that time until his death, ever call on you—

Mr. Burling: I am very sorry to interrupt you. I do have to ask you a question about B.

Mr. Gallagher: All right.

Mr. Burling: I object to the question on the ground that the document which has just been marked—and perhaps I could save time later by stating what 629 my objection is. I contend that the document marked "Fritz von Opel, Custodian."

The Court: I don't believe the matter is in dispute.

Mr. Gallagher: You mean the word "Custodian" should be on there (indicating chart)?

Mr. Burling: Yes.

Mr. Gallagher: It is on the exhibits introduced. I will write it in there (writing on the chart). Is that satisfactory?

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. Did your father call on you for any payment of income or payment of dividends, Mr. von Opel? A. No, never.

Q. At that time or at any time until the time of his death? A. No; never.

Q. Did you ever pay any income or dividends to your father? A. No, I did not.

Q. Or your mother? A. No.

Q. Did your mother ever ask you for any payment of income or dividends? A. No, she did not.

Q. Did you ever receive any instructions from 630 your father on how to invest your money? A. No.

Q. Did you ever receive any instructions from your mother on how to invest your money? A. No.

Q. Did you ever consult with your father prior to making investments with this money? A. No.

Q. Did you ever receive any instructions from him as to how or where you were to invest this money? A. No.

Q. Now, Mr. von Opel, we are down to B on this exhibit, Plaintiff's Exhibit 80, I believe it is. Is that correct? A. Yes.

Q. To go ahead for just a moment, so that we can get ourselves further down on this chart, I will now show you Plaintiff's Exhibit 72, a letter of May 9, 1932, addressed to the City Bank Farmers Trust Company, by the Overseas Finance Corporation, identified as Plaintiff's Exhibit 73, requesting the bank to open an account in their name, and attaching a power of attorney for Fritz von Opel.

And I show you also Plaintiff's Exhibit 74—

Mr. Burling: Would you be kind enough to ask the witness to identify the signatures on that document?

They are somewhat illegible.

631 Mr. Gallagher: I surely will.

By Mr. Gallagher:

Q. Have you any idea whose they are, or can you identify any of the signatures on that document? A. One is Dr. Frankenberg's signature, and the other one seems to be Dr. Meyer's signature.

Q. Dr. Meyer's, you think? A. Yes. It is rather unreadable.

Q. I show you Plaintiff's Exhibit 74, which purports to be a power of attorney to the bank for Fritz von Opel, dated May 9, 1932. A. Pardon me. I think it is Dr. Henggeler's signature.

Q. Dr. Henggeler's signature, rather than Dr. Meyer's? A. Yes.

Q. I also show you Plaintiff's Exhibit 72, a letter of May 31, 1932, addressed to the City Bank Farmers Trust Company by you, directing that they transfer to a custodian account in the name of Uebersee Finanz Korporation all the cash and securities now held by you in your main principal and income account, with the exception of 47,000 shares of General Motors stock which is to remain in your account subject to further instructions. And I ask you to read that and I ask you if you sent that letter. A. Yes, I did.

632 Q. And I also show you a letter identified as Plaintiff's Exhibit 75, dated May 31, 1932, addressed to the City Bank Farmers Trust Company, and signed by you as attorney for Uebersee Finanz-Korporation, and ask if you sent that letter. A. Yes, I did.

Mr. Gallagher: I now offer these documents, Plaintiff's Exhibits 72, 73, 74, and 75, in evidence, Your Honor.

(Documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 72, 73, 74, and 75.)

By Mr. Gallagher:

Q. Now, would you step down for just a moment, Mr. von Opel, and point out where, on this chart, Plaintiff's Exhibit 81 for identification, the funds now are? A. They are in this account C.

Q. Thank you.

Mr. Burling: I object to that, Your Honor, on the ground that the documents just offered in evidence on their face disclose that the account was for Uebersee Finanz Körporation, but omits to indicate that the account was for Uebersée as trustee for Fritz von Opel.

Mr. Gallagher: All right; we will strike that for a moment.

Mr. Burling: The chart does not reflect plaintiff's 633 own argument.

The Court: What was the question?

Mr. Gallagher: There is an objection, Your Honor. I had asked Mr. von Opel to identify where the money now was. He stated it had come from this account down to this account (indicating on chart), with the exception of forty-seven odd thousand shares of General Motors.

Mr. Burling objected, on the ground that the evidence we have introduced does not register the corporation as trustee for Fritz von Opel. We will strike that for the moment.

Mr. Burling: Then I will withdraw the objection.

And may the record indicate counsel has stricken the words "as trustee for Fritz von Opel" from Box C?

Mr. Gallagher: Temporarily.

The Court: Mr. Gallagher, you had better let me read these.

Mr. Gallagher: All right, Your Honor.

The Court: You are a little bit ahead of me. All right.

By Mr. Gallagher:

Q. At that point, then, we have all the cash going into this account? Is that right, Mr. von Opel? A. Yes.

Q. What happened to the forty-seven odd thousand shares of General Motors? A. They remained for the time being outside, in several corporations; but they in turn went into the Overseas Finance Corporation account. This chart certainly doesn't show every single account's action.

Q. Yes, I know that—but as a general outline. A. Only as a general outline.

Q. I note you have here you acquired the stock of Overseas in 1931. Is that correct? A. Yes, I did.

Q. And I note here it says the securities were sold, under the arrow, "to corporation 1934 and '35." By that do I understand correctly that all the securities sold and all cash had come into Uebersee as of 1934-35? A. Finally. Some of them even took a detour, to the Frima Corporation; but finally they ended in Overseas.

Q. Will you explain what the Frima Corporation is? A. The Frima Corporation is a corporation under a Liechtensteinian corporation.

Mr. Gallagher: I now offer, Your Honor, Plaintiff's Exhibit 76, a stipulation between the parties with respect to what the Frima is. And I think the stipulation itself gives sufficient information as to the documents.

Mr. Burling: I think the record should point out that the stipulation is that a witness, if called from Switzerland, would have testified as follows.

Mr. Gallagher: It states it in the stipulation.

Mr. Burling: Yes; I just wanted the record to make that clear.

The Court: All right.

(The stipulation referred to was marked and received in evidence as Plaintiff's Exhibit No. 76.)

By Mr. Gallagher:

Q. Now, directing your attention to the latter part of October, 1931—

After these instructions, which are expressed in the documents which have heretofore been introduced had been given by you, did you stay in America? A. No. I returned to Europe.

Q. What did you do? You went to Europe? A. I first saw my father for a day or two.

Q. Yes? A. And then went to see an architect in Berlin.

Q. Yes? A. And then went to Switzerland.

Q. I see. Did you go back to Antwerp? A. Yes. I spent quite a time in Antwerp; to finish up my affairs there.

Q. And did you maintain that home or residence 636 that you had in Antwerp? A. Until the end of the year, until we moved to Switzerland.

Q. And then you moved to Switzerland? A. Yes.

Q. Now, during this period of time, that you were in Switzerland, you might recollect that you had stated that in the fall, or September 9, as I recollect, to be exact, your father had applied for a license to the Foreign Exchange Control authorities, with respect to the three and a half million Swiss francs. Was any further action taken after your return to Europe with respect to this sum of money?

A. Oh, yes.

Q. Will you explain to the Court, please, what happened? A. That was a very ticklish affair, because in the application we had filed, my father had stated that he wanted to put me up in business by this loan, and I thought we shouldn't give it up all of a sudden. Otherwise the authorities might ask what else I have gotten in the meantime.

So I told my father we should play along for a while and give it up slowly, and not miss out at least showing a fight.

Q. And as a result, were certain steps taken by you in this regard? A. Yes. I attached the account 637 in Switzerland, and sent after a while and lifted the attachment, and it was then returned to my father's possession.

Q. Were those Swiss francs ultimately returned to German control? A. Yes, ultimately, yes.

Q. Did you continue thereafter to maintain a residence in Switzerland, Mr. von Opel? A. The first year I rented a house there; it was in 1932. And I rented the same house again in 1933, with an option to buy; and I bought the house in, I think, the summer of 1933, and then began to rebuild it.

Q. Did you finish rebuilding it? A. Yes, I finished rebuilding it, I think it was in the beginning of 1934. And at the same time I took permanent residence in Switzerland, and made tax arrangements there, and so on.

Q. During this period of two years, were you making periodic trips to the United States? A. Yes.

Q. Now, I will direct your attention to the month of February, 1933, and ask if you recollect the purchase of a quantity of gold at that time, of about a million dollars value, by the Overseas Finance Corporation? A. Yes, I do.

638 Q. And I will ask you if subsequent to the purchase of that gold, the corporation became involved in litigation? A. Not immediately. We filed, as I remember, an application, and the application was denied us, as far as I remember. I think it was filed. I think first Ladenberg filed an application in behalf of Overseas.

Q. For the release of the gold. A. For the release of the gold. And then later in 1935 an application was filed with the Treasury Department by John W. Davis.

Q. And what was the result of that application? Was it passed on favorably or unfavorably? A. It was denied ultimately. We had delivered gold, and we took quite a terrific loss on it.

Q. You state you took quite a terrific loss. Will you explain to the Court that phase of that transaction, Mr. von Opel? A. As a Swiss corporation, we carry on our books in Swiss francs. And when we bought the gold, it was valued, in our books, with about 6.4 million Swiss francs. And after the dollar was devaluated from, I think, 100 per cent to 59 per cent, it was so much less worth in Swiss francs; and we took a loss of I think close to three million francs—between two and a half and three million francs we had to write off.

639 Q. That would be roughly about four or five hundred thousand American? A. Yes; I should say about \$450,000 to \$500,000.

Q. I see. Now, if you had gotten the gold out of America and returned it to Switzerland what would that gold there have been worth in Swiss francs? A. Just the same as before.

Q. The same value as the amount that you had brought out originally? Is that correct? A. Yes, certainly.

Q. Now, in the course of that litigation, or rather, I should say first, in the course of the negotiations with the Treasury Department, and after the application had been filed, you signed an affidavit, did you not, Mr. von Opel? A. Yes, I did.

Q. And paragraph 15 of that affidavit reads as follows: "The 97 bearer shares of Uebersee"—

Mr. Burling: Where are you reading, please?

Mr. Gallagher: This is Defendant's Exhibit 8.

Mr. Burling: And will you give me the page number?

Mr. Gallagher: My page reference is 196. That would be page 66 in your exhibits.

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. That paragraph reads as follows, Mr. von Opel:

640 "The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on de-

posit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct. In addition I have an oral agreement with Dr. Frankenberg as managing director of Adler & Co. A. G. by which those shares are to secure any existing or future indebtedness on my part to Adler & Co. A. G. This arrangement was made in connection with a credit opened to me by Adler & Co. A. G. up to 1,500,000 Swiss francs, principally for the purpose of fulfilling a joint obligation to my father and myself to the German Reichsbank."

I will ask you, are those facts stated in that paragraph true? A. Yes, certainly.

Q. Now, Mr. von Opel, will you state to the Court the circumstances giving rise to those facts which are there stated and which I have just read to you? A. Just prior to this date, my father has been fined three and a half million reichsmarks by the German authorities, and I had to take steps to protect my own interest in this 641 matter.

Q. You state your father had been fined three and a half million reichsmarks. Will you state what that fine was for?

Mr. Burling: I object, Your Honor. The objection is that there was in fact a proceeding in a German court—I won't state what it was—relating to the gift which is in litigation here. I have prepared, if Your Honor please, a memorandum of law in which we argue that this Court should not receive the record or the judgment of the German court as having any probative value concerning the facts in issue here.

This is a very serious objection on this point, if Your Honor please. If this topic is opened, we will have to go

back and read perhaps 300 pages of depositions.

Mr. Gallagher: I don't believe we will, I might say.

Mr. Burling: Might I just finish my argument?

Extensive depositions have been taken from Wilhelm von Opel and from various other persons having knowledge of this proceeding in Germany. If this instrument goes before the Court, then both sides would have to explore what happened.

The Court: I have to go back. Read me that part again, and then I will follow you a little bit better after I get that in my mind. Read me that part you are referring to in the affidavit.

642 Mr. Gallagher: In the affidavit it states:

"The 97 bearer shares of Uebersee which I acquired in the manner above stated are now on deposit in a vault in my name, No. 1917, with the Swiss Credit Anstalt in Zurich, Switzerland, the key to which is in the possession of Dr. Frankenberg. This key is held by Dr. Frankenberg as agent and representative of my father, Wilhelm von Opel, for the purpose of safeguarding his usufruct. In addition I have an oral agreement with Dr. Frankenberg as managing director of Adler & Co. A. G. by which those shares are to secure any existing or future indebtedness on my part to Adler & Co. A. G. This arrangement was made in connection with a credit opened to me by Adler & Co. A. G. up to 1,500,000 Swiss francs, principally for the purpose of fulfilling a joint obligation to my father and myself to the German Reichsbank."

Now, the proceeding, Your Honor—

The Court: And let him finish his argument. What is the question on that? You have asked him first if those facts are true, and he said yes.

Mr. Gallagher: Yes; and I asked him to state what the circumstances were which caused him to take the steps related therein.

643 We are offering the decree, not for the value it may have as an expression of German law on the part of the German foreign currency authorities; but we are offering it as proof of the primary fact as to why he took certain actions subsequent to the entry of this decree.

The Court: And you want to know what information he had as to what happened over there?

Mr. Gallagher: He was fully aware of it. He was right in the proceedings.

The Court: But Mr. Burling's point, as I understand it, is that what actually occurred over there is not material, and it is not provable here.

Is that right?

Mr. Burling: That is exactly my point. But I think I might be able to come to an agreement with my friend which will obviate this argument. I will concede a proceeding was had before the German courts, as a result of which Wilhelm von Opel was fined three and a half million marks, and Fritz von Opel was required to pay \$500,000.

I will go that far.

Mr. Gallagher: Will you agree that a decree was entered?

Mr. Burling: That a decree was entered. The decree raises the basis for making an argument as to what the German court did. We refute that argument with hundreds of pages of testimony.

644 The Court: You haven't gotten to that point yet. I think we may be close to what you want. The question you are asking the witness is what led him to make this statement? Is that right?

Mr. Gallagher: And to take the actions referred to therein.

The Court: And to take that action?

Mr. Gallagher: That is right, Your Honor.

The Court: And Mr. Burling says he will concede that the witness may testify he did that, based upon a decree

of a German court which fined his father some three million—what was it?

Mr. Gallagher: Three and a half million reichsmarks.

The Court: And \$500,000 of which the witness was required to pay!

Mr. Gallagher: No, Your Honor.

Mr. Burling: No. There was a collateral arrangement with the German Government whereby at the same time Fritz von Opel agreed to pay \$500,000.

The Court: Does that get all you want?

Mr. Gallagher: No, Your Honor, it does not. If Your Honor would permit me a moment, here is the situation:

There was an investigation conducted into the whole question of this gift, for two years, by the German foreign currency authorities, a very searching and sweep-
645 ing investigation of both Wilhelm von Opel and Fritz von Opel.

The result of that investigation was a determination by the authorities, who found that his uncle had engaged in a false transaction, but sustaining the father's position that his gift had been a valid one.

They then fined the father, however, three and a half million reichsmarks, for failing, as they state in the decree, to exercise his contractual right, which Dr. Kronestein spoke about. I know Your Honor will recall, his contractual right to call on the establishment of the Niessbrauch. And that was what the fine was imposed upon his father for.

Now, we are going to show, because of that, and because of the language of the decree itself, what motivated Mr. von Opel in taking the steps that he did during the period of the next 15 months. It is very material and very pertinent to explain his actions.

The Court: I think I would have to sustain his objection to what this witness construed the decree to be—I mean, in so far as its accuracy is concerned. Now, what reaction he had to it, and why he took the steps he did—

Mr. Burling: If Your Honor please, in view of my

friend's statement, may I make a statement as to what our contention is as to the facts? We say they are wholly different.

Our position is that Mr. Gallagher, doubtless in 646 good faith, has wholly misstated what the facts of the German transaction are, and I would like to make a counter statement, if I may.

The Court: It hasn't made any impression on my mind. I don't know if it might not be a waste of time, if I am to put any reliance on the German decree. I will let you gentlemen state all the grounds you want. Now you are stating an objection to a statement by this witness why he took this action. Is that right?

Mr. Burling: I think if Your Honor will listen to me on the facts, I can make our position more clear.

The Court: All right.

Mr. Burling: Our contention is that the German authorities investigated the gift. The prosecutor, first an original investigator, and then prosecutor in the public prosecutor's office at Frankfort, came to the conclusion that the gift was a sham. Therefore the failure of Wilhelm von Opel to report the entire \$3,700,000 which was obtained from General Motors was a violation of German law, and he recommended prosecution to his chief; and his chief recommended prosecution to the Minister of Justice in Berlin.

There were conversations between Wilhelm von Opel and the Deputy Minister of Justice in Berlin. At that time it was stated that Adolph Hitler personally had directed there was not to be a prosecution.

647 Mr. Gallagher: Clearly hearsay.

Mr. Burling: And an arrangement was to be made, and so it was agreed, with the Minister of Justice in Berlin, that Wilhelm von Opel would plead what is the equivalent of *nolo contendere*, to a Judge, of not having reported the income under the *usufruct*, in return for a fine of three and a half million marks, and a collateral agreement running from Fritz to put up \$500,000.

So the court, the decree of which my friends wish to put before Your Honor, heard no testimony whatsoever. What happened was that the prosecution came in with a prearranged charge, and Wilhelm von Opel did not contest it.

I say that where there is—and I am sure it does not happen in this Court, Your Honor—but there are criminal courts and there are prosecuting officers where persons are permitted to plead guilty to lesser offenses as a part of a deal.

The Court: Mr. Gallagher, this is not part of your case in chief, is it?

Mr. Gallagher: I think it is, Your Honor.

The Court: What are you trying to establish?

Mr. Gallagher: I would establish the validity of the affidavit and show what steps he thereafter took in 1935 and 1936.

648 The Court: But aren't you anticipating some events?

Mr. Gallagher: No, Your Honor. We are trying to show what he did with the Uebersee shares thereafter, they now being in the Frima, and the steps he took in connection with this, the steps he took in connection with the put and call with the Swiss.

The Court: You can prove what steps he took, without telling all the reasons why, can't you? And if the reasons are impugned, you might come back later on. That is why I say I don't think the reasons are part of your case in chief.

Mr. Burling: I am perfectly willing to concede that there was a prosecution, and that a three and a half million mark fine was imposed. I merely want to keep out any argument about what the German court did or did not do.

The Court: In the ordinary course of events, the thing to do is to prove the transaction. And then if your adversary proves it was not a bona fide transaction, and

attacks the reason, you show the reason. You haven't reached that yet.

Mr. Gallagher: We feel in stating the steps this man took, and the actions, to understand them at this time, it is necessary to know what motivated him in his course of conduct.

The Court: I think ordinarily where you take an action, you prove the action; and until it is impugned, it 649 stands.

I am perfectly clear I cannot let this witness give any testimony that I could rely upon as to his interpretation of the decree of the court. That is evidently what Mr. Burling is afraid of. And if he says he interpreted it in such and such a way, and he took these steps for such a reason, that certainly does not bind me. I don't know whether it makes a whole lot of difference what he says on that point.

Mr. Burling: I have failed to make myself clear to Your Honor in one respect. I am not arguing so much what this witness says he thinks the German court did is inadmissible. I am saying that what the German court did in fact do is inadmissible, since it has no bearing on this case.

The Court: That may be true.

Mr. Burling: If there is some question about motive, I submit a prosecution was had, and his father was fined three and a half million marks. I will concede that. But I am trying to avoid an argument by Mr. Gallagher which I foresee will come in if the decree comes in, that the German authorities made a determination.

I say, as to what the German authorities did, first, I don't know; and, secondly, if we did know, it would be immaterial to this Court.

I have collected the authorities in general, and they are overwhelming, Your Honor.

The Court: I have no doubt about that. The 650 only question I understand he is interested in is trying to explain the fact that he had a trans-

action and had a reason for it. And what the reason is—

Mr. Gallagher: I am not offering it for the probative value of the decree at all, Your Honor.

The Court: Won't his stipulation give you enough?

Mr. Gallagher: Will you state it again, Mr. Burling?

Mr. Burling: I offer to stipulate that a proceeding was had in which Wilhelm von Opel was fined three and a half million reichsmarks, and that a collateral agreement was made at the time of this fine, between Fritz von Opel and the German authorities, whereby Fritz von Opel agreed to pay to the German Government \$500,000.

By Mr. Gallagher:

Q. Do you deny that collateral agreement? A. That is not correct. That is entirely incorrect. I did not pay anything.

Mr. Burling: I said there was an agreement that that be done.

Mr. Gallagher: Your Honor, could we recess at this point, and we will endeavor to reach a stipulation on that point?

The Court: If you can get a stipulation as to that, it is all right. If not, I will have to sustain the objection.

You say the action was taken because of the decree 651 of this court in Germany. That is all you need, in direct.

Mr. Gallagher: Thank you.

(The witness left the stand for the time being.)

The Court: Gentlemen, I am prepared to rule on this proposition about the witness. I have written it out so that you can have copies of it, and my ruling is as follows:

"There has been admitted in evidence, according to Rules of Court, the deposition of a witness named Man-

fred Stansfield, who resides in New York City. The defendant asserts that his personal presence in Court as a witness is desirable, since he is one of only two persons who have actual knowledge of the transaction the purport of which determines the outcome of this suit. The defendant further asserts that new information has been received with regard to material facts within the knowledge of this witness. Counsel for plaintiff has informed the Court the witness has stated he will come to testify in this Court if requested by the Court. The question is whether the Court should make the request.

"Ordinarily such a request by the Court should not be made, but counsel should be left exclusively to the remedies provided by law. In this case, however, the witness obviously is an important one; there are material questions

about which he has not been examined, the witness
652 is willing to appear, and the trial of the case will
not be delayed to await his appearance. Counsel for defendants have agreed that the deposition of the witness already read in evidence shall remain in evidence, that any testimony given in open Court by the witness will be considered as supplementary to the deposition and that the costs of the witness' appearance will be borne by the defendant, within usual Government limitations. Upon the basis of these stipulations, and, without indication of any order to the witness to appear, the Court is willing to request and hereby does request the witness to appear before this Court on Monday, December 20, 1948, at ten o'clock in the forenoon. If the witness appears as requested, examinations of him will be first made by counsel for defendant and followed by counsel for plaintiff."

The Court (continuing): I have made copies of that for each one of you, gentlemen. So that is the disposition of that matter, and we will adjourn until tomorrow morning.

(Accordingly, at 4:10 p.m. the trial was adjourned until 10 o'clock tomorrow morning, Wednesday, December 15, 1948.

656

PROCEEDINGS

Mr. Gallagher: Your Honor, if I may, I will read a stipulation which the parties have reached with respect to the criminal proceedings in Germany.

"It is hereby stipulated between the parties that a fine was imposed upon Wilhelm von Opel in the District Court in Frankfort, Main, on July 14, 1934, in connection with the gift agreement, in the amount of three and a half million reichsmarks.

"It is further stipulated between the parties that no objection will be made to Fritz von Opel's testifying he thought further payments would be demanded by the German Government pursuant to the provisions of the gift agreement."

The Court: Very well.

Accordingly,

Fritz von Opel resumed the stand and was examined and testified further as follows:

Direct Examination (Continued)

By Mr. Gallagher:

Q. Now, Mr. von Opel, you have just heard that stipulation entered into between the parties, with respect to the fine imposed upon your father in the summer of 1934. I now direct your attention to the month of April, 657 1935. State what action, if any, you took at that time, in the light of this fine which had heretofore been imposed on your father. A. At this time I was confronted with a rather difficult situation. The lawyers of my father

insisted that the action of the German Government had been entirely illegal.

But it was in 1934; it was a time of so-called blood purge. Thousands or twelve hundred people had been shot, and it certainly was a time where might went before right. And I thought at the time, instead of fighting or trying to fight the Nazis, on a basis of legal opinion, it would be better to set up my affairs in such a way that even if my father would be forced to establish a Niessbrauch, that finally nothing would come out of it.

I had anticipated this situation already in the years previous to this date. Normally an investment of this size took up at least, let me say, one-third in cash, one-third in bonds, and the rest in marketable securities.

I thought, however, that the Nazis might jump on me, and thought it would be better always to stand in a position to throw my books open and show there was nothing of cash or marketable securities they could grab.

In Europe there is a saying, out of the reckless times of the Middle Ages, which says, "Nothing left so that even the Emperor can grab anything."

And I followed more or less, after 1933, this saying, by arranging all affairs so that in no moment was there anything of cash or value which could be grabbed by the Nazis.

This economic arrangement, of course, was made—or, rather, let us say it this way:

On top of this economic arrangement, I used many other protective devices which permitted me, in times of need, to use kind of a delaying tactic and to throw the Nazis off my track.

Now, in 1935, I did not agree with Dr. Gross that it would be possible to straighten this matter out on a legal basis. He was of the opinion that the Niessbrauch was merely a personal claim against me.

He was of the opinion that the gift agreement clearly indicated the intention of the parties not to draw the Niessbrauch, and so that it was not only a personal claim against

me, but also a conditional personal claim. And it was so reported by my father in all of his official declarations, and as a property tax, and otherwise.

Mr. Burling: I move to strike the testimony concerning the opinion of some German lawyer, Your Honor, on the ground, first, it is opinion testimony; and, second, it is hearsay.

The Witness: We have letters to this—

By Mr. Gallagher:

Q. Don't state what Dr. Gross' opinion was—

Mr. Galagher: And we have no objection to the striking.

659 The Witness: I have Dr. Gross' letter of 1934—

Mr. Gallagher: We will strike that, Your Honor.

By Mr. Gallagher:

Q. Let us get down to April, 1935, Mr. von Opel. A. At this time I thought it was best to establish a Niessbrauch and to retain all dividends in American subsidiaries, not to pay out anything in the Overseas Corporation. And so if my father would have asked for his Niessbrauch, he would get 80 per cent of zero, or any small amounts I might let pass on to him, if necessary.

I further thought that it might be advisable that I disappeared for some months from the scene of action, because if I was not around, nothing could be done in the meantime. So I agreed with some friends of mine to sail with them, and go on an extended cruise to the Pacific.

At this time I asked that Dr. Frankenberg, I explained to him the situation and asked of him whether he was willing to act as my father's representative in these matters.

and he told me, he said he would be willing to do so, if my father asked him.

I sailed in, I think it was the middle of April, from Bordeaux to Jamaica; and before we really could get started on the cruise, I received a wire from my lawyers in New York to immediately come up to New York.

Mr. Burling: Will you fix the year, please?

660 Mr. Gallagher: This is the spring of 1935 we are talking about.

The Witness: So I had to interrupt my intended cruise, and I had to go to New York, and contacted there Davis Polk, who represented Overseas in the matter pending with the Treasury Department.

By Mr. Gallagher:

Q. What did you do when you contacted Davis Polk?

A. I stated to him all facts in connection with Overseas—the gift agreement, and all the different setups which had taken place.

Mr. Burling: Excuse me. Davis Polk is not a human being, is he?

Mr. Gallagher: John W. Davis. The firm was Davis, Polk, Wardwell, Gardner & Reed, at the time.

Mr. Burling: Is this Mr. Davis personally?

By Mr. Gallagher:

Q. John W. Davis personally, at the time? A. Yes, at the beginning.

Mr. Burling: Thank you.

By Mr. Gallagher:

Q. Alright; you say you made a statement to them of the whole situation? Is that correct? A. Yes, sir.

Q. And what happened after you made your statement to them? A. They then filed an application to the Treasury Department for release of this gold.

Q. Did they prepare an affidavit for you? A. Yes, sir.

Q. And that is the affidavit we are referring to as Defendant's Exhibit 8? A. Yes, it is.

Q. And you stated to them the facts that they have incorporated in that affidavit? Is that correct? A. Yes.

Q. After you had signed the affidavit, and it had been filed with the Treasury, I believe you previously stated that the negotiations subsequently failed. Is that correct?

A. Yes, I think so, yes.

Q. Did you remain in the United States? A. No, I did not. I left immediately.

Q. And where did you go? A. I went first to Switzerland, and then to Germany, to speak to my father about this matter.

Q. Do you remember approximately when you saw him? Was it still that summer? A. It was in the same summer, yes, the summer of 1935.

Q. Did you have any discussion with him at that time about this Niessbrauch and the fact that you had 662 appointed Frankenburg to be his agent? A. Yes, I told him what I had done, and the reasons for it. And he stated that he didn't want it this way, that he in the meantime had made up his mind and said he would rather fight it out than have every year the same problem, not only with the Foreign Funds Control, but also with the property tax and the income tax.

He had in the meantime several discussions with Dr. Gross.

Q. Who is Dr. Gross? A. Dr. Gross was his lawyer. And the political situation had cooled off in the meantime.

Q. Yes? A. And Dr. Gross had convinced him that there was a chance to legally waive all remnants of this usufruct.

Mr. Burling: If your Honor please, I object to any testimony from this witness as to what Wilhelm von Opel said about waiver, on the ground that Wilhelm von Opel was interrogated by the plaintiffs. They took his deposition, and they omitted to ask him any question whatsoever about waiver. The first time there is any testimony about waiver in this case is after Wilhelm is dead.

Mr. Galagher: Your Honor, that is not the fact. The question of the waiver was brought up at the same time at 663 Wiesbaden, with Dr. Gross present there, who is the attorney who expressed to the Reichsbank the entire situation.

The Court: I suppose if he objects to what was told to the witness, I will have to sustain it as hearsay.

Mr. Burling: If you will show me the page reference to the deposition of Wilhelm von Opel, if there is any reference whatever to waiver.

Mr. Gallagher: I didn't state there was a waiver there. I stated that in Dr. Gross' statement taken at the same time at Wiesbaden.

Mr. Burling: If your Honor please, I don't mean to press a mere hearsay objection. I know Your Honor's position. But I do object to hearsay from Wilhelm, when they had every opportunity to get that and didn't do it. And they now bring it in after his death.

The Court: I will have to sustain it, if it is hearsay. I sustain it on that ground.

By Mr. Gallagher:

Q. Were you present with your father and Dr. Gross during the summer and fall of 1935, at the time the question of a waiver of the Niessbrauch was discussed? A. Yes, I was.

Q. Did you discuss that waiver with your father? A. Yes.

Q. Did you discuss that waiver with Dr. Gross? A. Yes, I did.

664 Q. And you were present when it was discussed? A. Yes.

Q. And Dr. Gross was present when it was discussed? A. Yes.

Q. And was your mother aware of this fact, and was she advised? A. Yes, certainly. She wasn't always present, but in some of the discussions.

Mr. Burling: I renew my objection, Your Honor, on the ground that Marta von Opel was examined by deposition and not a single word was asked her about waiver.

The Court: Is this testimony you are trying to bring out an actual waiver that was made by Wilhelm von Opel in his presence?

Mr. Gallagher: Yes, Your Honor.

The Court: I thought he was relating what the father told him.

Mr. Gallagher: Oh, no. This was in his presence, and as a result of the discussion by the parents in the presence of Dr. Gross, who also will be a witness here. Dr. Gross thereafter advised the Reichsbank of these facts and, as we will prove through his testimony, did so so that the parents would not get into further trouble.

The Court: You are trying to prove an oral waiver by the father?

665 Mr. Gallagher: Yes, Your Honor.

The Court: I think his testimony would be admissible, notwithstanding the fact that the other man did not testify to it. You could argue as to the weight of the testimony. And the fact that the mother and father didn't testify to it; if they didn't, that would be a subject for you to argue later on. But I think the witness can tell about it.

Mr. Burling: Yes, Your Honor.

By Mr. Gallagher:

Q. Will you state to the Court, Mr. von Opel, the nature of that discussion between your father and Gross, and you, and all the circumstances surrounding that. This is in the summer of 1935 and the fall of 1935, as I recollect? A. Yes. Dr. Gross explained, in writing and in words, the legal position. He emphasized the fact that at the time of the gift no right in rem had been established.

He further emphasized that even this personal claim, which had been established, was apparently a conditional claim, namely, based upon the desire of my parents to receive a payment.

And my father, of course, we are no lawyers and we had to depend on counsel's advice. He gave him free hand in any way to get rid of this Niessbrauch. He told Dr. Gross, in my presence:

666 "It isn't a question for me how you to do that. I am only interested in the result. I don't want to be bothered with this Niessbrauch any more. I don't want to hear of this word Niessbrauch. Get rid of this thing."

And I must say this word Niessbrauch was a main topic in our conversation for years to come, until 1937 the Reichsbank indicated they would take no action in this matter.

Mr. Burling: I move to strike any testimony of this witness as to what the Reichsbank indicated it would do.

The Court: Well—"until 1937". The rest will be stricken.

By Mr. Gallagher:

Q. As a result of these discussions, was Dr. Gross given any directions? A. Yes.

Q. And, as I understand it, they were to try to get rid of this Niessbrauch? A. Yes, certainly.

Q. Do you know what Dr. Gross did thereafter? A. Yes; I always was informed on the matter. He first addressed letters to the local branch of the Foreign Funds Control.

Mr. Burling: If Your Honor please, this is pure hearsay.

The Court: Yes, I think it is.

667 Mr. Gallagher: All right, Your Honor. I will withdraw it or strike the answer.

By Mr. Gallagher:

Q. Do I understand you correctly, Mr. von Opel, that you and your father and mother, however, had agreed that their rights to the establishment of the Niessbrauch were gone, had disappeared? Is that correct?

Mr. Burling: I am sorry to be so contentious this morning, Your Honor, but Mr. Gallagher should not lead the witness or summarize his testimony.

The Court: I think you will have to let his testimony stand on that, Mr. Gallagher, unless you want to ask him specific questions on it.

Mr. Gallagher: Let it stand at that point? All right, Your Honor.

The Court: What was this date of the discussion with the Doctor and the mother and father?

The Witness: That was the summer and fall of 1935, Your Honor.

By Mr. Gallagher:

Q. Can you state whether or not your parents agreed that the Niessbrauch should be waived or not? A. Yes, certainly.

Q. What did they agree? A. They agreed that they only had a personal claim against me, conditioned upon their own distress. They would only ask for their support in case they would financially be unable to maintain themselves.

Mr. Burling: Will you fix the date of this agreement?

Mr. Gallagher: This is the summer or fall of 1935.

By Mr. Gallagher:

Q. Is that correct? A. Yes.

Mr. Gallagher: That is as definite as we can place the date, Mr. Burling, because the first action we have any written evidence of is Dr. Gross' letters of October, 1935, to the Reichsbank.

By Mr. Gallagher:

Q. Now, after your parents had agreed to abandon the Niessbrauch under this gift agreement, is it my understanding Dr. Gross' employment was solely to try to gain approval from the Reichsbank for this waiver? Is that correct?

Mr. Burling: I again object to the repeated leading of counsel's own witness. It is not necessary to summarize the testimony, Your Honor.

The Court: I guess he had better tell it in his own way. Ask him what occurred.

By Mr. Gallagher:

Q. State the purpose of the employment of Dr. Gross.

A. As I stated it before, his instruction was to get rid of the Niessbrauch in any legal way possible.

Mr. Gallagher: Will you excuse us just a moment, Your Honor?

By Mr. Gallagher:

Q. After that period of time, Mr. von Opel, were you informed of the result of Dr. Gross' action in this respect?

A. Yes, I was.

Q. And what was the nature of that? A. Dr. Gross considered it—

Q. No, not what he considered.

Mr. Burling: If the Court please, I object to this witness testifying what Dr. Gross or someone else told him that Dr. Gross or someone else did.

The Court: I sustain it.

Mr. Gallagher: All right, Your Honor.

By Mr. Gallagher:

Q. Mr. von Opel, where was the stock of Uebersee at this time? A. In the beginning of 1935, and I think all through 1935, it was kept in a safe in a Swiss bank in Zurich.

In the beginning of 1936 it was taken out and deposited with Adler & Company for the account of Frima.

Q. And did the stock remain thereafter with Adler & Company for the account of Frima? A. No. I sold this stock under a put and call option to about fifteen 670 Swiss people.

Q. I show you a letter of June 25, 1936, signed by the Union Bank of Switzerland, and ask you if you can state what that document is—Plaintiff's Exhibit 78 and 78-A. A. That is a confirmation signed by the Schweizerische Bankgesellschaft, stating again the agreement and their actions.

Mr. Burling: Will you furnish us with a copy of that exhibit?

Mr. Gallagher: Yes. I thought he had furnished you one; I am sorry. That is the June 25, 1936, letter.

I now offer Plaintiff's Exhibit 78 and 78-A in evidence. The Court? All right.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 78 and 78-A.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 79-A for identification, a statement of Adler and Company stating therein that—

"We notify herewith that we received from Frima Trust Establishment, Vaduz on May 30, 1936

"97 shares of Overseas Finance Corporation, Ltd."

Will you state whether or not that is the receipt for the shares? A. Yes.

671 Q. Mr. Gallagher: I now offer this, Plaintiff's Exhibit 79 and 79-A.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 79 and 79-A.)

By Mr. Gallagher:

Q. Did you ever repurchase these shares of Uebersee, Mr. von Opel? A. Yes, I did. I regarded the transaction as a kind of insurance. It cost me about \$10,000 additional expenses to keep this agreement going. But when war became imminent, I think it was in November, 1941, I then thought that in America, as the blocking had already taken place, and I thought there was no danger that the Nazis might undertake further action against me now. So I repurchased the stock.

Q. I show you what purports to be a deposit statement, Plaintiff's Exhibit 80 and 80-A, of Adler and Company,

and ask you if this is a deposit statement, reflecting the repurchase of the Uebersee shares, and the fact that Adler and Company was holding them on deposit to Frima's credit? A. It shows the entire transaction as reflected by the books of Adler. It shows the delivery to the Bankgesellschaft, and also the return of the shares from the Bankgesellschaft.

Mr. Burling: I am afraid, if Your Honor please,
672 there is again a mixup in the numbering on Plaintiff's documents. I think the chart is marked Exhibit 80; is it not?

Mr. Kenny: No; that is now 81.

Mr. Burling: Thank you.

Mr. Gallagher: I now offer, Your Honor, Plaintiff's 80 and 80-A.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 80 and 80-A.)

By Mr. Gallagher:

Q. Mr. von Opel, did you ever pay a capital gains tax to the United States as a result of the gift made by your father? A. Yes, I did.

Q. Will you state the amount and what took place, in assessing that amount, and the final terms? A. I was first assessed an amount of eight hundred, I think, \$850,000. And my lawyers asked me to go to Germany and prove by documents the value of the shares at the time of the gift; and then, after all those documents were in, tax was assessed, if I remember correctly, around \$130,000 or \$135,000.

Q. And it was finally paid? A. Yes.

Q. Now, Mr. von Opel, was a tax paid on this gift
673 in Germany? A. Yes, certainly. The tax declaration was made three months after the gift, at the end of this three months' period we had under the law.

— And a tax of slightly above two million reichsmarks was paid on it.

Q. Now, Mr. von Opel, did the Uebersee Korporation ever engage in doing business with an enemy country or an ally of an enemy? A. No, sir.

Q. Did the Uebersee Korporation ever operate mines directly or indirectly in Hungary after December 6, 1941? A. No, sir.

Q. Did you ever operate mines directly or indirectly in Hungary after December 6, 1941? A. No, sir.

Q. Did you ever engage in doing business in Hungary after December 6, 1941? A. No, sir.

Q. Now, did your father or mother ever make any demand on you for income, interest, dividends, or any part of the gift or the proceeds therefrom? A. No, sir.

Q. And did you ever pay to your mother or father any income, dividends, interest, from the gift or its proceeds or any part therefrom? A. No, sir.

674 Mr. Gallagher: That is all.

Mr. Burling: May I ask Your Honor a question as to time? Your Honor expressed the desire or the hope that the case be completed prior to Christmas, that is, prior to the close of business on the 23rd, and said that Your Honor would hold court longer hours if it seemed necessary to accomplish that end.

It seems to me that we can say it will be necessary to sit for longer hours, if we are to be through by the 23rd. My friends have indicated they desire to cross examine at least one of my witnesses at great length, and I am afraid this cross examination will take at least eight hours.

The Court: We will see how we go.

Mr. Burling: Yes, Your Honor.

The Court: How many more witnesses do you have, Mr. Gallagher?

Mr. Gallagher: We have two, and Dr. Kronstein on the nationality. I don't believe our witnesses would take over—

I believe but for the cross examination we would be finishing today.

The Court: All right.

Cross Examination

By Mr. Burling:

Q. Mr. von Opel, I hand you some pieces of paper 675 and ask you if you can recognize them. A. Yes. These are German so-called paper marks, printed during the time of the German inflation, between 1920 and 1924, apparently.

Q. Those are the old marks which preceded the reichsmarks? Is that correct? A. Yes.

Q. Now, will you count them and see if I have not handed you fifteen million marks? A. Yes, it is possible.

Q. Now, fifteen million marks, before World War I, would have been worth approximately three and a half million dollars. Is that correct? A. That is possible. At the time of the stabilization, I think one dollar was worth one billion reichsmarks.

Q. One old mark, wasn't it? Wasn't the exchange a billion on the marks for one reichsmark? A. Approximately. It doesn't make much difference one way or the other.

Q. No, but I would just like the answer to my question, if you please. A. Yes.

Q. In other words, before World War I, the number of marks I hold in my hand would be worth about three and a half million dollars? A. That is possible.

676 Q. And fifteen million old marks, which were stabilized for the new reichsmark in 1924, at a rate which would have made this amount of currency worth one and a half pfennig? Isn't that true? A. Yes, that is possible.

Q. And that would have been less than one American cent? A. Yes, that is possible.

Q. In other words, this paper is totally worthless, except as a curiosity? A. It is a fact that the paper was worth more than the amount printed on it.

Q. Under the escrow agreement between your father and General Motors, before the gift, before October 5, if he had put the 600 Opel shares to General Motors, he would have received back, if he had received marks, about fifteen million marks? Isn't that so? A. Yes, depending upon the day when he exercised the option.

Q. You have testified that in late September or early October, 1931, you and your father had a discussion concerning the escrow agreement. A. Yes.

Q. Didn't you and your father have in mind the fact that within the decade preceding that conference, 15 million marks had become totally worthless, due to the inflation? A. Definitely. Every German was aware of this fact.

Q. And the possibility that the assets, the 600 shares of Adam Opel, if they were valued in marks, that is, if he received marks for them, from General Motors, under the escrow agreement, those marks might become totally valueless once more was in your mind, was it not? A. If it wasn't based upon a gold clause or a dollar exchange rates, yes.

Q. Now coming to another subject, you testified, did you not, you were apprehended as an alien enemy in February, 1942? A. Yes.

Q. And this took place in Palm Beach, Florida, did it not? A. Yes, sir.

Q. And your wife was apprehended at the same time? Is that correct? A. Yes, sir.

Q. And you were taken for temporary detention to Miami? Isn't that so? A. Yes, sir.

Q. And then there were proceedings before an alien hearing board in Miami? A. Yes, sir.

Q. And, after that, the Attorney General issued an order directing that you and your wife be interned? Is that correct? A. I guess so.

Q. And you and your wife were then taken to a family internment camp at Seagoville, Texas? A. Yes, sir.

Q. Prior to your going to Seagoville, had you not been in touch with Colonel Mittler of the Army? A. No.

Q. When did you first communicate with Colonel Mittler? A. When I was taken back to Miami for my first rehearing.

Q. I see. You testified, did you not, when you were first apprehended and you were in Miami, conditions were very unpleasant? A. Within those quarters, yes. It was not a camp. It was a professional building, and we were living 60 or 70-men with one toilet and one shower. I must say it was rather unpleasant.

Q. When you were taken back to Miami for a rehearing, you found that the detention station had moved, didn't you? A. Not only moved; it was entirely given up.

Q. Well, the place where persons were detained in 679 Miami was a different place, wasn't it? A. Yes; it was the quarters of the Border Patrol.

Q. The Border Patrol, and they were quartered in what had previously been a very large private house? Isn't that so? A. Yes.

Q. It was a house on Biscayne Bay, wasn't it? A. Yes, sir.

Q. And there was no fence around the house, was there? A. There was no fence, but there were about 20 or 30 border patrolmen.

Q. But I will ask you just to answer my questions, if you will. A. Yes.

Q. There was no fence? A. No.

Q. And there was a large lawn running between the house and the waters of Biscayne Bay? A. Yes, sir.

Q. With palm trees around the house? A. Yes; I remember it was very pleasant.

Q. And you and your wife had a pleasant bedroom overlooking Biscayne Bay, did you not? A. As well as you can regard a prison pleasant, yes, it was pleasant.

680 Q. I am talking about the physical conditions under which you lived. A. It isn't only the physical conditions which count, but also the moral conditions.

Q. Well, we can discuss philosophy perhaps some other time. Now I want to know about the physical conditions.

Physically, you had a bedroom in what had formerly been a large, luxurious house, did you not? A. Yes.

Q. And you and your wife did a lot of cooking in your room, did you not? A. Yes.

Q. Was the door to your bedroom ever locked from the outside? A. No; but there was a matron sitting in front of it day and night.

Q. All the time you were there? A. Yes. They had three matrons in shifts of eight hours.

Q. Yes; but that matron was wandering around the entire establishment, was she not? A. No; her desk was right in front of our door.

Q. And she was not sitting there day and night, was she? A. I wasn't in charge of the matrons, Mr. Burling.

681 Q. But you and your wife were free to walk around the house or the grounds as you chose, were you not? A. Yes; but the matron was always ordered to follow us out, either the matron or the board patrolman.

Q. And there were no eating facilities for providing you with food in this board patrol station, were there? A. No. The few people which were—

Q. Please just answer my question, Mr. von Opel, and don't volunteer.

The answer was no, wasn't it? A. No.

Q. So that when it came time for you to eat, you were driven in a board patrol car in to a restaurant where you were provided with meals! Isn't that true? A. Yes, and it is also true—

Q. Will you please answer the question and say nothing further. Your own counsel can bring out anything he sees fit, in addition to my own examination.

In other words, the conditions of detention in Miami were very much more pleasant than they were at Seago-ville, Texas? Isn't that so? A. Definitely so, because we were alone and not among others.

Q. I must ask you again to answer my question: Were they not physically more pleasant?

682 Mr. Gallagher: If Your Honor please, I think he had not said that.

(To Mr. Burling:) You added the "physically" and I think the answer ought to stand, Your Honor.

Mr. Burling: I think the answer should be yes or no.

The Court: I don't know the purpose of this line of examination.

Mr. Gallagher: Neither do I, Your Honor.

Mr. Burling: We will come to it again, Your Honor.

By Mr. Burling:

Q. Isn't it the fact that while you were in Miami the second time, you gave suggestions to Colonel Mittler for the purpose of causing Colonel Mittler to represent that you should be kept in Miami rather than returned to Seago-ville? A. That is not the fact, Mr. Burling—if I can answer the question correctly.

Q. You have answered it. You say it is not correct.

Mr. Gallagher (to the witness): Do you wish to state anything further, Mr. von Opell?

The Witness: Yes.

Mr. Burling: Mr. Gallagher, I wish you would stop interfering in my cross examination.

The Court: I think you will have to object, gentlemen. Otherwise you can make a note of the point and then ask him on redirect.

683.

By Mr. Burling:

Q. After a while, it is the fact, is it not, you were moved from Miami and taken to a camp near New Orleans?

A. Yes.

Q. You said yesterday it was in New Orleans and you meant to say, did you not, it was in Algiers, across the river from New Orleans? A. Yes, sir.

Q. And you referred to that camp as being known as the Jewish internment camp, did you not? A. Yes; that is what it was called, by the people living in there.

Q. Is it not the fact that you were not interned in any camp, anywhere, with any person of Jewish origin who had been residing in the United States at the time of the outbreak of the war? A. I don't quite get this question. You mean all people interned were coming from the outside?

Q. There were no persons, no Jewish persons in Algiers, except persons who were brought from Latin America. Isn't that so? A. Yes, you are right.

Q. Thank you. Now, will you state what your understanding was as to why you were sent to that camp? A. I didn't quite get it.

684 Q. What was your understanding as to why you were sent to that particular camp? A. My understanding was that the Immigration Department had found out that it was not safe for me to go back to Seagoville, Texas.

Q. And what was your understanding as to why the Immigration Service thought it would not be safe? A. I think several people had reported to the Immigration Department to this effect.

Q. You don't claim that at this time you yourself were an anti-Nazi, do you? A. I don't know what you understand by "anti-Nazi"; I was a liberal all my life.

Q. From 1933 until the time you were moved to Algiers, you were not opposed to the Nazi regime in Germany,

were you? A. I don't understand what you mean by "opposed", you say. It would have been ridiculous to shout from the rooftops in Europe that I was against it. It would only have endangered my father. But everybody who knew me, and all of my friends, knew exactly where I stood.

Q. Now, between 1933 and 1939 you had occasion to be in Germany several times, did you not? A. Yes, sir.

Q. What does the word Parteitag mean? A. Parteitag means a yearly gathering in Nuremberg.

685 Q. A yearly gathering of what? A. Of the Nazi Party.

Q. Do you not know of your own knowledge it was the chief Nazi ceremonial demonstration? A. Yes, it was.

Q. And that was held in Nuremberg, was it not? A. Yes, sir.

Q. You knew, do you not, that your wife had dinner with Adolph Hitler at Nuremberg on the occasion of the Nazi Parteitag in 1938? A. Yes. She has clearly stated why and how.

Q. You know that also at that occasion a woman named Leni Riefenstahl was present, do you not? A. Yes, sir.

Q. And Leni Riefenstahl was very prominently associated—

Mr. Gallagher: Your Honor, I would like to interrupt Mr. Burling at the moment and ask what the purpose is of this whole line of inquiry. We don't see its relevancy in this matter, and it is just consuming time, it seems to me.

Mr. Burling: Its relevancy is, Your Honor, that I seek to attack the credibility of the witness. I don't believe persons opposed to Adolph Hitler were also having dinner with him at the occasion of the Nazi Parteitag in Nuremberg.

686 The Witness: I never had dinner with Adolph Hitler, and I never met him.

Mr. Burling: Or that their wives were having dinner with him.

Mr. Gallagher: You don't contend this property was owned by Mr. von Opel, do you, Mr. Burling?

Mr. Burling: No. I am coming to the next point, if you will permit it.

By Mr. Burling:

Q. And Leni Riefenstahl was very prominently associated with Adolph Hitler in the papers, was she not? A. She was just denazified, to my own great surprise, I must say.

Q. Will you answer my question? A. What is the question?

Q. Wasn't she very prominently associated with Adolph Hitler? A. I couldn't say so. She was a movie producer and she made at one time a film on the war. But apparently she is not regarded as such; otherwise she would not have been denazified.

Q. Isn't it true that every person familiar with German doings knew that Leni Riefenstahl was very close to Adolph Hitler? A. If you depend upon newspaper gossip, many newspapers called her Adolph Hitler's girl friend.

687. Q. And she visited you at your home in St. Moritz, did she not? A. Yes; I have known her since 1920 or 1925.

Q. And a man named Hans von Bibra was a guest in your house at St. Moritz? A. Yes.

Q. And do you know he was the head of the Nazi Party organization in Switzerland? A. I didn't know it at the time. And you know perfectly well the circumstances how I met this man, namely, to get my release from the German Army after I was mobilized. I tried everything to secure my safety.

Q. Now we will go to another topic. Going back to the questioning which Mr. Gallagher conducted yesterday, relating to your position in Adam Opel prior to the General Motors purchase. A. Yes.

Q. The negotiations for the sale were commenced in 1928, weren't they? A. In the fall.

Q. In the fall of 1928? A. Yes.

Q. And you were 29 years old at that time? A. Yes, I was.

Q. You were one of the most prominent automobile racers in all Germany then, weren't you? A. 688

I wouldn't say that. My racing days were between 1920 and 1923. Later on I drove a few speedboat races, but I retired from automobile racing.

Q. I see. You were an airplane pilot at this time, were you not? A. In connection with my rocket experiments, I wanted to fly the plane myself, and I learned to pilot a plane.

Q. And you competed in free balloon races, did you?

A. No, with one exception. I made my pilot license because I was interested in all those things. And before the Nazis came to power, I decided to fly a balloon in the Gordon Bennett race, as co-pilot.

Q. That is the international free balloon race? A. The international free balloon race.

Q. You were the co-pilot of one of the German balloons?

A. Yes; this balloon was entered, I think, by the German Balloon Association in 1932.

Q. And you were present when Mr. Gallagher made his opening statement in this case, I take it? A. In regard to what, Mr. Burling?

Q. You heard Mr. Gallagher's opening statement, did you not? A. Yes.

Q. And he stated, I believe, that you were widely 689 regarded as an athlete in Germany at this time?

A. Yes, I can say so.

Q. And I don't mean to ask you to be immodest, but would you agree that you had a position comparable to that held by Gene Tunney in this country at that time?

A. Our business required to be popular. We had to sell

bicycles and automobiles, and it could only be done by a lot of personal advertising.

Q. And you had time to engage in all these activities, and yet by the age of 29 become the general manager of the largest automobile works in Europe? Is that your testimony? A. My sports activities, Mr. Burling, were restricted to Sundays. And I will be pleased to prove by a newspaper clipping that even in the biggest automobile race, the first automobile race after the war in Germany you see, I was in Berlin in 1931, when the race which I won—that they had to install a special training day for the Opel crew, because I had no time to go there and train with the other drivers.

Q. What position do you say you held in the plant just prior to the sale of 1929? A. At this time my father was chairman of the board of directors. My uncle, Fritz von Opel, my godfather, was vice chairman.

Under German law, no member of the board can be an officer of a corporation. And I was, therefore, the legal head of the Opel corporation.

690 Q. What position did you hold? A. As alleinges Vorstandsmitglied, which means the sole manager—or we will call it "general manager", if you like.

Q. But your father was chairman of the board? A. Yes, sir.

Q. Was he active in the affairs of the Adam Opel? A. Yes, sir. Normally it would not have been possible. But it was a family enterprise; so certainly there was a close relationship between my uncle and my father on one side, and me as the legal head of the corporation.

Q. Do you think that your father was in a position to know who the managers were, in 1929? A. Oh, certainly.

Q. Have you read your father's deposition in this case? A. Certainly.

Q. By the way, did you say that you raced for Germany in this balloon race before the Nazis came into power? A.

No. I said the balloon was entered before the Nazis came to power.

Q. But you represented Germany after they came to power? A. The race in 1933, in the summer, in Chicago.

Q. After the Nazis came into power? A. Yes; 691 they had come to power previously.

Q. As to your father's testimony in the deposition concerning the position you held, are you familiar with it? A. I don't know.

Q. Then I will read it to you, reading from page 6 of the Wiesbaden deposition—and this is the questioning of your father relating to you:

“And what was his position or capacity at the firm in 1929?

“Answer: In 1929 he was an engineer in the firm.

“Question: In 1929 some interest in the Opel firm was sold to the General Motors Corporation of the United States, was it not?

“Answer: Yes.

“Question: Well; just before the sale of the interest in the firm to General Motors, what position did Fritz have with the firm?

“Answer: A leading position with the firm in the production branch. He was, furthermore, a member of the board of directors.”

Now, is that testimony of your father's correct or incorrect? A. I don't remember that I was a member of the board. That doesn't seem possible to me. He must have made a mistake there. Because as I remember under German law, no officer could be a board member. But

692 we always had our meetings together, you see. It was a family enterprise, Mr. Burling. We didn't stick to any formalities. And certainly my father had the say in this enterprise. I never claimed anywhere that I could do anything I pleased, you see. We were all cooperating and working together.

Q. But your father characterized your position there as

that as having a leading position in the production branch. Do you think that is an accurate characterization? A. Production was everything with an automobile or bicycle corporation. And if you object to the use of the word "engineer", I always signed, you know, in registration papers, as an engineer, and my father always signed as a "Kaufmann", or you would translate the Kaufmann as merchant. Those were the titles good enough for us at the time.

Q. Now, coming to another topic, after the purchase of the 80 per cent of the Opel shares in 1929, you came to the United States, did you not? A. Yes.

Q. And you and your wife lived in hotels in various American cities for about a year? Is that correct? A. Yes.

Q. And then you went to Antwerp? Is that correct? A. Yes.

Q. Where did you live in Antwerp? Will you give 693 us the address? A. We lived in Brascard, which is a small town outside of Antwerp. I would rather call it a village. If I am correct, I think the address was Leopold Road, or something of the sort.

Q. Did you buy a house in Brascard? A. No; I rented a house.

Q. You rented a house? A. Yes.

Q. Was it a furnished or unfurnished house? A. It was a furnished house.

Q. And did you rent it on a lease? How did you rent it? A. I really don't know. Those details my wife took care of, and I never signed a lease.

Q. Did you have also an apartment in Berlin at this time? A. No, sir.

Q. Did you ever have an apartment in Berlin? A. No.

Q. Can you identify the address, "Bismarck Strasse 33 Charlottenberg"? A. Yes.

Q. What is that address? A. That is a business and office building. It is called the so-called Elektro Verbands Haus, an office building where all the electrical concerns have their headquarters.

Q. Did you have an office in that building? A. No.

Q. Did you have occasion to go frequently to that building? A. My father had an office in that building.

Q. Did you have occasion to go there frequently? A. Yes, I went there occasionally.

Q. You were asked yesterday about your estimate of your father's wealth in 1931. A. Yes.

Q. Did I understand you to say that you thought that taking out the 600 Opel shares, the remainder would be in the neighborhood of 25 million marks? A. I think I stated that at this time his property tax assessment was in the neighborhood of, I think, 21 million reichsmarks.

And I further explained that under German law that does not represent the real value, but a somewhat lower figure.

Q. I show you Plaintiff's Exhibit 25, which purports to be the 1931 property tax return of Wilhelm von Opel, and ask you to examine it and see if you can state from that what your father's return as his property in the year 1931 was. A. It says the total value of other property, 695 19.9 million, which is close to 20 million. But as it says total value of other properties, there must be something else. So I think it is approximately the figure I gave you.

Q. Is that figure before or after you take out the 600 Opel shares? A. Which is the date of the declaration? It must have been disregarding my 600 shares.

Q. Doesn't that tax return speak as of January 1, 1931? A. It is unquestionably not an original.

Q. I show you Plaintiff's Exhibit 26, which purports to be the assessment.

I show you Plaintiff's Exhibit 25-A and Plaintiff's Exhibit 25-B; and 25-B, in the original, was an exhibit to the return 25-A. A. Yes.

Q. And I invite your attention to the item indicating six million reichsmarks Adam Opel Aktien, valued at one million eight hundred thousand. A. Yes. If you deduct

this one million eight hundred thousand, then the value of the other property, as it says here, is eighteen million.

Q. So that as of January 1, 1931, the tax value of your father's property, other than the 600 Opel shares, 696 was 18 million marks? A. Apparently. But as I explained to you, the assessed valuations are considerably lower than the real valuations.

Q. That is your best estimate as to the real value of the property which had the assessed value of eighteen million? A. You see, for instance, here in the Opel shares there you have a good example. The Opel shares are valued at 1.8 million. The escrow agreement said they could be sold at sixteen or seventeen million. So they are at about 10 per cent of the valuation. I don't know how far that goes for other securities listed in it.

Q. What is your best estimate, the best you can do, to estimate what your father's net worth was, not counting the 600 Opel shares, in the year 1931? A. It is beyond me to guess at it.

Q. You did guess at it yesterday, didn't you? A. No. Yesterday I said I thought the tax declaration at the time was about twenty or twenty-two million marks assessed values; and if I remember correctly, it might be the 1932 or 1933 assessment. One of these assessments shows these figures, I am sure.

Q. So that your testimony now is that you are unable to make any estimate as to what your father's real net worth was? Is that right? A. I didn't say any estimate.

I gave you the minimum. What the maximum was 697 is just a question of imagination.

Q. You are unable to make any reasonable estimate as to what your father's real net worth was? Is that right? A. The least he had was, as the tax declaration shows, about twenty million.

Q. But you are unable to make any better estimate as to what the real value was? A. That would be mere guesswork. But I thought it considerably higher.

Q. Well, how much higher? A: I would say at least five million, maybe ten millions. It is a mere guess of mine.

Q. So your present statement, if you agree that the tax rate shows a tax estate of about eighteen million, that it would be from twenty-three to twenty-eight million? A. You can figure it out backwards in the following way:

He had 900 shares of Opel of his own: The price he received then was 24 million marks, and of course in addition he had personal property.

So at this time I guess he must have been worth, let us say in round figures, 30 million reichsmarks, less taxes to be paid, of course.

Q. And the 600 Opel shares were worth about fifteen and a half million, under the escrow agreement? Is that 698 right? A. Yes; as I recall, the escrow agreement has had different rates, according to the time of sale.

Q. Assuming you would sell it in 1931— A. At the time of sale, it was 26 million and I guess 650 reichsmarks.

Q. Twenty-six million? A. Pardon me—26,650 reichsmarks per 10,000 shares.

Q. But the total is somewhere between fifteen and sixteen million reichsmarks? A. Yes, that is correct.

Q. And if we add that to your estimate, to your guess that your father's net worth otherwise was thirty million, that would bring you to a total net worth, before October 5, of approximately forty-five million? A. I didn't say thirty million. I said one could imagine twenty-five or maybe even thirty.

Q. I see. A. As a rough guess, I would say forty million.

Q. Now, there were living in 1931 eight grandchildren, either direct heirs of Adam Opel? Is that correct? A. Yes, that is correct.

Q. And there were living two sons of Adam Opel, your father and your Uncle Fritz? A. And my uncle, yes. My uncle was unmarried.

699 Q. He had no children? A. And he had no children, no.

Q. And you have one living sister? A. Yes.

Q. And no brothers? A. No.

Q. And your six first cousins had all taken their shares of the Opel inheritance by inheritance, hadn't they? A. Yes.

Q. That is, by the death of their parents? A. Yes. Some of them had inherited, say, apart, even before the incorporation of the Opel enterprise.

Q. But they took by inheritance? A. They took by inheritance, yes, certainly.

Q. And your sister had received a dowry or marriage settlement of 500,000 marks? Is that correct? A. She was married to a very wealthy man, a friend of our family, and she received several gifts, one in addition to her dowry, in 1933. If I remember correctly, it was an additional million or so.

Q. You are familiar with your father's will, are you not? A. Yes, I am.

Q. And there is no mention in the will of any gift other than the gift of the dowry, is there? A. I think it 700 mentions gifts received. It doesn't stipulate the single gifts.

Mr. Burling: I ask that Defendant's Exhibit 32 and 32-A be marked for identification.

(Accordingly, the last will and testament of Wilhelm von Opel, the English translation, and the German, was marked for identification as Defendant's Exhibit 32 and 32-A respectively.)

By Mr. Burling:

Q. Will you examine, please, Defendant's Exhibit 32-A and state whether that is a certified copy of your father's will? A. Yes, I think it is.

Q. Will you turn to paragraph 4, please, or section 4. Will you tell me if I am translating correctly—

“In the event that any claims for a compulsory portion are made, the sum of 500,000 reichsmarks plus 5 per cent interest, given to our daughter Elinor as a dowry on the occasion of her marriage, is to be charged against her or her descendants' share of the inheritance, or the compulsory portion, as the case may be.” A. Yes.

Q. (Continuing)—

701 “The same arrangement shall be effective in respect of the current allowances which our daughter Elinor is presently receiving.” A. It doesn't say “allowances”. It says “laufenden zuwendungen”, which means everything given to her.

Q. I see—

“The gift of nominal 600 shares of Adam Opel A.G. made to our son according to the gift agreement of October 5, 1931, shall be charged against his or his descendants' share of the inheritance, in accordance with the provisions stipulated in the gift agreement with respect to the accounting”—

Then I will not read any more.

Mr. Gallagher: What is the date of that will?

By Mr. Burling:

Q. What is the date of this will? Is it not November 20, 1938? A. Yes, I think it was a new will of my father.

Q. Does this refresh your recollection as to whether your father made a gift, after your sister's marriage, of a million marks to your sister? A. It isn't specifically mentioned in there. I told you from the beginning I don't remember it was mentioned; only it says in a general way that everything given to the sister should be accounted for. And that certainly would include the gift of

702 1933.

Q. What is the gift of 1933? A. A gift of my father to my sister.

Q. What is the amount of that gift? A. If I remember correctly, it was around a million reichsmarks.

Mr. Burling: Will Your Honor give me a moment? I offer Defendant's Exhibit 32 and 32-A in evidence.

Mr. Gallagher: No objection.

The Court: It will be received.

(The documents previously marked for identification Defendant's Exhibits 32 and 32-A were received in evidence.)

By Mr. Burling:

Q. How do you translate a word in paragraph 4 of the will—"laufenden zuwendungen"?

Mr. Gallagher: Would you mind handing it to him, please?

The Witness: "Laufenden zuwendungen."

By Mr. Burling:

Q. How do you translate those words? A. It is hard to translate.

Q. Well, what does the first word mean? What is "laufenden"? A. If you are asking me for a legal opinion, I don't know what a lawyer understands by it.

703 Q. What do you understand by it? A. I understand by everything—

Q. What do you understand by the word "laufenden" please? A. "Laufenden" normally means something repeatedly given.

Q. And what does "zuwendungen" mean? A. "Zuwendungen" means—it is a very wide word, you see, in a very wide sense. It means everything given to a person.

Q. Does it mean anything more than a gift? A. It includes, as I see the word, it includes everything for which the other person hasn't to return anything. In my opinion, it includes gifts too, certainly.

Q. And will you agree that "laufenden", in this context, means "current"? A. It means repeatedly.

Q. I see. Your father didn't repeatedly, your parents didn't repeatedly give your sister a million marks, did they? A. No, sir. They couldn't even give her any current expenses, because she was living in Switzerland. So what you imply cannot be a fact, on account of the currency regulations. The will was made in 1938, and she was living in Switzerland.

Q. Do you have any knowledge as to why your 704 father referred specifically of 500,000 marks, and did not refer to a gift of a million marks which you say he made? A. He referred to it—not specifically.

Q. In the phrase "repeatedly give gifts"? A. He specifically says "and future donations", or however you translate "zuwendungen". So there was a provision even included for future acts.

Q. I thought you agreed that "laufenden" could be translated "current". A. There is a sentence following it, and you must read both sentences together.

Q. The following sentence reads as follows:

"The gift of nominal or six million shares of the Adam Opel A.G."— A. No; that is not the sentence I mean, Mr. Burling.

Q. Then will you read it to the Court, the sentence you had in mind? A. May I see the German?

Q. That is the German (handing). A. It says here: "Which our daughter will receive or is going to receive."

You see, the word "noch" implies a future act.

Q. This will is made in 1938, isn't it? A. Yes.

705 Q. So a gift made in 1933 would not be a future gift, would it? A. Certainly not, no.

Q. And the gift which you say was made of a million

marks in 1933 is not referred to in the will, is it? A. No, it is not referred to, only in a general way. Everything she received before or, say, after should be accounted for.

Q. Is it not the fact that, assuming you were given the 600 shares of Opel as you stated, you were the only grandchild of Adam Opel that took a large part of the Adam Opel wealth by a gift from a parent while the parent was alive? A. Two cousins of mine had gotten even bigger amounts by inheritance.

Q. Will you please answer my questions, Mr. von Opel? You can understand that question. A. You mean by way of gift?

Q. You heard the question, did you not? A. You asked me, if I understood correctly—

Will you read it again to me?

The Reporter (reading): "Question: Is it not the fact that, assuming you were given the 600 shares of Opel as you stated, you were the only grandchild of Adam Opel that took a large part of the Adam Opel wealth by a gift from a parent while the parent was alive?"

706 The Witness: Yes, that is correct.

By Mr. Burling:

Q. Thank you. Now, did I understand you correctly to testify that in the conversations of October, 1931, your father said to you that this gift of 600 shares of Opel would put you ahead of your sister? A. Definitely so, yes.

Q. And did he say that what he wanted you to do was to take the capital, which would yield an income of, say, a million marks a year, and keep for yourself the equivalent of what your salary from Adam Opel had been, and to accumulate the rest on behalf of your sister? A. That is not a good expression—"accumulate on behalf of my sister." She never was to receive accumulated amounts. There was just an accounting procedure.

Q. You were not to take more than 20 per cent? Is that correct? A. Approximately, yes.

Q. And the remaining 80 per cent was to be piled up? Isn't that so? A. "Piled up" isn't the proper expression, Mr. Burling.

Q. Fine. Well, what was to be done with the remaining 80 per cent? A. It was to be accounted for.

707 Q. What was to be done with it, sir? A. It was to be accounted for, as stipulated in the gift contract.

Q. Will you tell me what was to be done with the remaining 80 per cent? You were to get 20 per cent. What happened to the rest of it? A. I don't understand your question.

Q. Assume that a million marks is earned in the year 1932, from the investments which are the proceeds of the 600 Opel shares. A. Yes.

Q. Under your father's expressed intention, you were to take 20 per cent, or 200,000 marks for yourself? A. It was understood this way in the beginning, yes.

Q. Thank you. What did your father say to you was to be done with the remaining 800,000 marks? A. I had to account for it with my sister.

Q. Well, will you explain what you mean? A. I am not a lawyer. It is clearly explained through the "ausgleichung".

Q. Where would the money be placed? A. The gift contract does not say anything about where the money has to be kept. It is just as I tried to explain to you, an accounting procedure.

708 Q. All businesses are carried on with accounting procedures, Mr. von Opel; but an accountant can say where the money is. What was to happen to the money? Would it just disappear? A. I was entirely free to dispose of it as I wanted. Only in the case of the death of my parents, I had to account for this amount.

Q. I see. What did your father tell you he wanted you

to do with the 80 per cent, until the death of both of your parents? A. Nothing.

Q. Well, then you were to accumulate it; if you were to do nothing with it? Isn't that so? A. Will you just read the gift contract; everything is clearly stated in there. There is no instruction in the gift contract obliging me to keep any amounts in this way or the other, not a word of that.

Q. I have read that instrument myself, Mr. von Opel. I want to know now what your testimony is as to what you and your father talked about in Wiesbaden and Ruesse-heim, in October, 1931, with reference to the 80 per cent of the income. A. He told me he wanted his both children to be on the same basis; and if he would make quite a considerable gift to me, that I should account for it with my sister. He didn't want her to be put at a dis-
709 advantage. And for this reason there are many para-graphs in regard to undrawn earnings, as it is translated here, which were stipulated into the contract. And Dr. Hachenburg paid specific attention to this para-graph.

Q. Yes, Mr. von Opel. But I still want to know about the 80 per cent. Isn't it the fact that you were to take 20 per cent for yourself, for your living, and that you were to employ the other 80 per cent of the income in some manner? A. There is nothing stipulated in the gift contract.

Q. I have read that many times. I am asking you about your discussions with your father. A. I just repeated to you what he said, namely, he said he wanted both children to be on exactly the same basis.

Q. What did he say to you, Mr. von Opel, again assuming you have a million marks, which is what you testified yesterday, I think, did you not, he said, "You will have an income of about a million marks from this gift"? A. Yes, he figured it out and compared it with my former income at the Opel Corporation.

Q. And he said, "If you keep 20 per cent of the income

from this gift, you will have about the same income as you had before."

Can't you tell us at all what he said he wanted you to do with the remainder, except to account for it? A. I can only repeat what is stipulated in the gift contract. You must read the gift contract. I am not a lawyer.

Q. I wasn't present in Rüsselsheim, either. I am trying to find out what your father said. I do not know where the 80 per cent was to go.

In the year 1932, assuming your father and mother did not die, were you to deposit the 80 per cent in the bank, were you to invest it, or were you to buy a yacht with it? A. No; nothing was said about it in the gift agreement. I could freely do with it what I wished. But at the end after my father's death, I had to account for it to my sister.

Q. But you testified yesterday you were to take 20 per cent for yourself. A. Yes.

Q. And that leaves the remaining 80 per cent just floating with no instructions from your father as to what to do with it? Is that correct? A. Yes, correct.

Q. Have you ever before stated the contention that the split, 80-20, you have just testified about, was because of your father's interest in your sister?

Have you ever indicated that before yesterday to any official of any Government or in any court proceeding in any country? A. Everybody who reads this gift 711 contract and sees that the biggest part of it refers to this matter of accounting, must naturally see it.

Q. There is nothing in Plaintiff's Exhibit 5, that is, the gift agreement, that says that the reservation that you are to take only 20 per cent of the income is for the purpose of equalizing the treatment of you and your sister, is there? A. It is expressly stated that the undrawn amounts meaning this 80 per cent, are to be added to the capital for accounting purposes. It is clearly stated in the gift contract.

Q. Now, coming to another topic:

You said yesterday, did you not, when you arrived in New York in October, 1931, you went at once to the National City Bank and inquired as to who was the officer who had charge of the escrow agreement with General Motors? A. Yes, I did.

✓ Mr. Gallagher: I don't believe he stated that, Mr. Burling. I believe he said in charge at National City Bank of the escrow agreement.

Mr. Burling: I don't understand the objection.

Mr. Gallagher: I believe you misstated his testimony of yesterday. I am merely trying to correct it. I believe the witness stated yesterday, when he arrived in New York he wanted to find who the escrow agent was at the bank, and not who was in charge at General Motors.

712 By Mr. Burling:

Q. All right, I will take your counsel's question, Mr. von Opel. Didn't you say you wanted to find out who the official of the bank was who was in charge of the escrow agreement? A. That is correct. I didn't know the name of the official.

Q. And then you found the name of the official? A. Yes, I did.

Q. And then you went to see him? A. Yes.

Q. And you told him about this deed of gift, did you? A. Yes, sir.

Q. And that was Mr. Pratt? A. Yes.

Q. And the escrow agreement was with the National City Bank? Is that right? A. Yes.

Q. Don't you know as a fact that Mr. Pratt was not even an official of the National City Bank? A. I didn't get this question.

Q. Did you not know it to be a fact that Mr. Pratt was not an official of the National City Bank? A. That is per-

fectly new to me. I hope you don't mix him up with Mr. Pratt of General Motors. There is another Mr. 713 Pratt in General Motors. But I think he is no relative of Mr. Pratt of the National City Bank.

The gentleman I have in mind is vice president Pratt; I forget his initials.

Q. I show you Defendant's Exhibit 33 and ask you if that refreshes your recollection.

Mr. Gallagher: What is that exhibit?

Mr. Burling: A letter from Mr. Sammis, vice president of the City Bank Farmers Trust Company.

Mr. Gallagher: And dated when?

By Mr. Burling:

Q. Mr. von Opel, I wish to state to you that this is a letter from Mr. Sammis, the vice president of the City Bank Farmers Trust Company. A. Yes.

Q. To John Thomas Smith, vice president of General Motors Corporation. A. Yes.

Q. The genuiness of which is admitted by the plaintiff. A. The Sammis was City Bank Farmers Trust.

Q. That is correct. And he is admitted to be vice president of City Bank Farmers Trust Company. A. Yes; they have many vice presidents.

Q. I call your attention to the words "Referring to 714 your inquiry of our Mr. Pratt"—

Does that refresh your recollection as to who Mr. Pratt was? A. Yes, that is the name which I mentioned.

Q. This is a letter by the City Bank Farmers Trust Company relating to "our Mr. Pratt". A. Yes.

Q. And that does not refresh your recollection that Mr. Pratt was not an official of the National City Bank? A. It refreshes my recollection that he was, because it refers to him as "our Mr. Pratt".

Q. An official of a different bank refers to him as "our

"Mr. Pratt", and that refreshes your recollection he was an official of the National City Bank? A. The National City Bank and City Bank Farmers Trust is one corporation, merged now at this time, I think not merged but certainly under joint management.

Q. They have completely separate staffs of officers, do they not? A. I don't know the relation between the two banks. I only know they are cooperating closely together. And I think it is not unusual that a vice president of the City Bank Farmers Trust refers to a vice president of the other bank as "our Mr. Pratt."

Mr. Burling: I offer Defendant's Exhibit 33 in evidence, Your Honor.

715 Mr. Gallagher: No objection.

The Court: Very well.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 33.)

By Mr. Burling:

Q: Of what country do you purport to be a citizen, Mr. von Opel? A. I am a citizen of Liechtenstein.

Mr. Gallagher: That has been stipulated, Mr. Burling.

Mr. Burling: I am going on to something else.

Mr. Gallagher: Then the word "purport" should be stricken. It is stipulated he is a citizen of Liechtenstein.

By Mr. Burling:

Q. Did you acquire such citizenship by naturalization?

A. Yes, I did.

Q. At the time you were naturalized, did you take an oath of allegiance? A. No; that is not required by law.

Q. You took no oath of allegiance? A. No; it is not

required by Liechtensteinian law. It can be taken any time after naturalization and has nothing to do with the naturalization proceeding as such.

For instance, you will find in the laws that all 716 women don't need to take an oath at all to become a citizen. It is only taken for those who, I think people of military age, and in such cases.

Q. Did you ever take an oath of allegiance to Liechtenstein? A. No; I did not.

Q. Do you regard Liechtenstein as your adopted country? A. Yes, I did.

Q. Do you now? A. Please?

Q. Do you now regard Liechtenstein as your adopted country? A. Certainly.

Q. Do you feel allegiance toward Liechtenstein? A. I do.

Q. What kind of a government has it? A. It is a principality.

Q. At the time you were naturalized, what was the name of the reigning prince? A. It was Prince Constantine.

Mr. Burling: Will you stipulate that the correct name is Franz Josef, II?

Mr. Gallagher: I haven't any idea who it may be.

Mr. Burling: I state I can prove it is a matter of 717 judicial notice. I can bring in the textbooks.

Mr. Gallagher: Well, you prove it. I cannot see the relevancy of this, Your Honor, in view of the fact that he is a citizen of Liechtenstein.

The Court: I think that there may be some relevancy.

By Mr. Burling:

Q. When did the reigning prince at the time you were naturalized ascend the throne? A. I think the former prince resigned. It was his uncle.

Q. That isn't responsive to my question, Mr. von Opel.

At the time you were naturalized, somebody was Prince of Liechtenstein. A. Yes.

Q. What is your best judgment as to when that man ascended the throne? A. Prince Leopold, you mean?

Q. Whoever the prince was. A. If I recollect it correctly, it must have been, I think the old prince resigned in the thirties, I think the middle thirties, if I am not mistaken.

Q. Do you regard your allegiance to Liechtenstein such as it would include a duty to fight in defense of your country? A. I am not a militarist, and I am not used to 718 speak in such terms. If I would have to fight, in Switzerland or Liechtenstein, which I regard as one unit, I certainly would fight for them.

Q. Well, you are not a citizen of Switzerland, are you? A. But Liechtenstein and Switzerland are very closely related. In fact we are represented by the Swiss Foreign Office. And as I could not yet become a Swiss citizen, I decided to become a Liechtensteinian citizen, which is the closest I could come to it.

Q. What does the flag of Liechtenstein look like? A. It is blue and red.

Q. Do you know whether during World War II your country was invaded? A. During World War II?

Q. Do you know as a fact, was it or was it not invaded? A. Well, Liechtenstein wasn't invaded, no. It is part of Switzerland; and they have a military union with Switzerland. The Swiss would have fought for Liechtenstein.

Q. Whether or not war was declared or not, did soldiers, not Liechtensteinian or Swiss, enter Liechtenstein?

Mr. Gallagher: Will you state the time, Mr. Burling?

Mr. Burling: During World War II.

Mr. Gallagher: During World War II—does that mean 1942 or 1939? Will you state the time?

Mr. Burling: No, I won't. I think, if this man

719 doesn't know whether his country was invaded—

Mr. Gallagher: He was interned from 1941 on.
The Court: We will let him answer.

The Witness: I am not aware of the fact that Liechtenstein was ever invaded.

By Mr. Burling:

Q. Isn't it the fact that in 1945, Russian soldiers who had deserted to the German Army entered Liechtenstein in great numbers, ahead of the— A. Romanian soldiers entered Liechtenstein as well as Switzerland, as deserters, and were interned, and perhaps French soldiers and maybe Russian soldiers. At the time I was not present there. But there certainly was no invasion of Liechtenstein. It would have been an invasion of Switzerland, and everybody would know about it.

Q. As a result of the inrush of Russian soldiers in Liechtenstein, don't you know the towns of Liechtenstein were abandoned—

Mr. Gallagher: If your Honor please, all this witness could possibly know about this situation could be by reading it in the newspapers or elsewhere. He was in the States since 1940, and was in internment at the time, Mr. Burling is talking about.

The Court: He is trying to show what knowledge he kept of conditions in this country. I will permit it.

720

By Mr. Burling:

Q. Is Liechtenstein an absolute monarchy, or is some other sort of government? A. It is, as I say, a constitutional monarchy.

Q. Can you tell me within 25 years when the constitution was adopted? A. Before the First World War, Liech-

tensteir had a loose relation to the Austrian Hungarian Empire. And after the First World War, they came over to the Swiss side, and I think that about this time certain changes of the constitution took place.

Q. Does it have a legislature? A. Yes, there is a legislature.

Q. What kind? A. An elected legislature.

Q. Of how many houses? A. One house.

Q. How long has Liechtenstein been an independent sovereign principality, approximately? A. That goes back, I think, since its separation from the Austrian-Hungarian Empire. They were part of it and then split under those rulers. I think it was in the beginning of the Nineteenth Century, if I am not mistaken.

Q. In the Napoleonic era? A. That is possible.

721 Mr. Burling: I advise counsel, and if they refuse to stipulate, I will prove the correct answer to that is 1866.

By Mr. Burling:

Q. What is the approximate population of your country? A. Ten thousand inhabitants.

Q. What is the approximate population of the capital of your country? A. I should say Vaduz is, I would say, about—well, you would not even call it a city. It is more or less of a town, a little town—I think about 2,000 or 2,500 inhabitants.

Q. When did you last set foot in Liechtenstein? A. I think I was there last in 1938.

Q. How did you happen to be there? A. I passed through Liechtenstein.

Q. In an automobile, or in a train? A. In an automobile.

Q. And how long did it take you to drive through Liechtenstein? A. It is a very small country. If you really

drive fast, you can go through there in, it depends upon which side to which you go.

Q. Well, Liechtenstein, the main road between Austria and Switzerland runs through Liechtenstein, doesn't 722 it? A. Yes, and also the railway.

Q. And if you were going from Austria to Switzerland, you could drive through in less than half an hour, couldn't you? A. Yes, you could do that.

Q. And have you ever been in Liechtenstein except while passing through it? A. No.

Q. And you were not in Liechtenstein at the time you were naturalized, were you? A. No. I could not go, because at the time I was rather sick and could not go personally.

Q. Are you familiar with the Liechtensteinian naturalization law? A. I only know what my lawyers told me about it.

Q. Were you not told that in order to become naturalized in Liechtenstein, it is necessary first to acquire membership in a community in Liechtenstein? A. Yes, definitely. That is the same all over Switzerland and Liechtenstein.

Q. Thank you. And what community did you become a member of? A. The community of Planken.

Q. Is it not true that the law provides that except under special circumstances, an applicant for naturalization 723 must be a resident of the community for three years prior to naturalization? A. That is not correct. The naturalization law says that in special cases exemption from this ruling can be made.

Q. That is what I said. The law provides that except under special circumstances one must be a member of the community for three years, doesn't it? A. I don't know. I think it says a resident of the community.

Q. All right. Have you ever been in Planken? A. Yes.

Q. When? A. I drove through there. I drove through Liechtenstein quite frequently.

Q. And did you drive through Planken also? A. I think, yes. It is more or less a little village. It is right on a plateau overlooking the Rhine Valley.

Q. Now, what are the exceptions to the rule that you must reside in the community for three years prior to naturalization?

Mr. Gallagher: Your Honor, I would like to renew my objection again to the length of this cross examination on this particular subject, in view of the fact that the Government has heretofore stipulated that this man is a citizen of Liechtenstein.

724. Mr. Burling: If Your Honor please, our position is that as a matter of international law Liechtenstein is an independent sovereign power, and we cannot look behind its rules. And if my pet poodle were to be given citizenship by Liechtenstein, there would be nothing we could do except accept it.

Mr. Gallagher: Absolutely, and that is the right of the sovereign of any nation, and you know that, Mr. Burling.

Mr. Burling: And that is all we have conceded; that Liechtenstein has done this; and I shall come to the motives of that principality in a moment.

The Court: I had the impression that the point was to be made that under certain conditions the German citizenship would not be given up.

Mr. Burling: That is correct, Your Honor. That is what this is offered for.

The Court: And I understand you are trying to establish the conditions which would indicate he hadn't really forsaken his German citizenship.

Mr. Burling: That is exactly what I am trying to establish.

The Court: I will take it, and we can hear you on it at the end of the case.

By Mr. Burling:

Q. Do you know what the exceptions to the three-year residence rule are? A. No, I couldn't tell you that.

725 Q. Did you pay anything to the community of Planken? A. Yes.

Q. How much did you pay to the community of Planken? A. The community assessed me, I think, it was the sum of around thirty or thirty-five thousand francs.

Q. That is about seven thousand dollars? A. Yes.

Q. And did you pay anything to the Principality of Liechtenstein, also? A. Yes. The law provides that 50 per cent of the amount paid to the community has to be paid to the Principality.

Q. So how much did you pay in all to Liechtenstein? A. I paid to the Principality thirty-five thousand and seventeen thousand five hundred—or thirty-five thousand to the community and seventeen thousand five hundred accordingly to the Principality. And sent out several registration fees and so on and so forth. I don't remember those figures.

Q. Will you agree with me that the total budget of the Principality of Liechtenstein the year you were naturalized was about two million Swiss francs? A. About, yes, it is a very low budget.

726 Q. So that what you paid to Liechtenstein in the year you were naturalized is equal to about 3 per cent of the entire gross budget of the Principality? Isn't that right? A. No, that is not correct. Because the community keeps what she gets. Because a community, under Swiss law, has to take care not only of its members but also of the dependents of the members. It is quite a heavy obligation, which a community under Swiss and Liechtensteinian law undertake.

Q. But, at any rate, the sum of money you paid into Liechtenstein, either to the Principality or the community, was equal to about 3 per cent of the budget of the

Principality of Liechtenstein? A. That is not correct, Mr. Burling. You cannot take any sum and refer to a budget of another unit.

As I told you, what you pay to the community, stays in the community, and then in turn guarantee your livelihood in time of distress.

Q. You have made that point, but what I have asked you seems to me to be a simple question—

The sum of money which you paid, either to the Principality of Liechtenstein or to the community, added together, is equal to a sum which is 3 per cent of the total budget of the Principality? A. Mathematically taken, yes.

Q. Thank you; that is what I asked you.

727 Q. Do you know the approximate population of the community which you bought into? A. I think they have about, I would say, offhand; four or five hundred members.

Q. Would you agree with me if I told you that the books of reference state that it is 100? A. No; I think it is more than 100. It is a very small place.

Q. Now, in addition to the sums of money you paid outright to the community and to the Principality, you lent thirty-five thousand Swiss francs to the Prince of Liechtenstein, did you not? A. That is not correct, either, Mr. Burling. That is another provision of the law—

Q. Do you say it is not correct? A. Yes.

Q. Thank you. Then I ask you, didn't you previously testify you did lend the Prince of Liechtenstein thirty-five thousand Swiss francs? A. That must be a mistake. I investigated into the matter, and I regret these mistakes. And I found out differently. I think there was an amount of 30,000 Swiss francs.

Q. Will you try to answer my question, please?

Mr. Gallagher: Let him finish, Mr. Burling, please.

728 Mr. Burling: I am repeatedly trying to get the witness to answer a question and not make a general speech. I am not required to let the witness finish, if he goes on beyond the question.

By Mr. Burling:

Q. The question was, did you previously testify you lent the Prince of Liechtenstein 35,000 Swiss francs? A. That is possible. I don't remember, though.

Q. I will ask you if you gave the following testimony in April, 1942, to the Miami alien enemy hearing—

I am reading from pages 60 and 61 of the transcript:

"Mr. von Opel (going on): And on top of that, they expect the Liechtensteinian citizen to acquire some Government bonds; and so I acquired about \$10,000 worth in interest bearing but non-transferable Government of Liechtenstein Government bonds.

"So the whole transaction, including these bonds, which I still own, I think the whole thing was about, let me see, about \$20,000.

"How many francs would that be?

"Answer: About 90,000 francs.

"Question: Did those bonds represent a loan to the Prince of Liechtenstein?

"Answer: Yes, the bonds, they are worth about, I should say, thirty or thirty-five thousand francs.

729 "Question: Is it really a loan directly to the Prince?

"Answer: A 3 per cent loan, interest bearing bonds."

The Witness: You said is it a completely correct statement, I stated it was given to the Government of Liechtenstein. I never paid anything to the Prince.

By Mr. Burling:

Q. Weren't you asked, "Is it really a loan directly to the Prince?"

And didn't you say—"A 3 per cent loan"? A. It means the Principality, I mean, not to the Prince personally. I never gave a loan to the Prince personally. It is clearly stated it was given to the government of Liechtenstein.

Q. And were you questioned during the Miami hearing about the political ties of Liechtenstein? A. I don't remember it.

Q. Do you remember saying this—and I am reading from page 58:

"About five years ago there was a vote going on, and they had, I think, one or two Nazi members in the Liechtensteinian Parliament, and they were outvoted, I two votes against fifty or sixty." A. Yes; that is what I was told.

Q. Don't you know that the total membership of 730 the Liechtensteinian Parliament is 15? A. That is possible. I only wanted to express—I think there are more than 15, Mr. Burling—

I only wanted to say, I was asked whether Liechtenstein was, or had connections with some Nazi Party, or any connections with Germany. And I said, "No; in fact, they are anti-Nazi, and there is but a small fraction of the population sympathizing with them."

Q. Who handled your naturalization in Liechtenstein? A. I did not get it.

Q. What attorney handled your naturalization in Liechtenstein? A. Dr. Marxer. It was handled between Dr. Henggeler—

Q. Will you examine a full page advertisement in a brochure on Liechtenstein and examine an advertisement from one L. Marxer, lawyer, and state whether or not that is the man who did it? A. Yes, I think that is a Mr. Marxer. He was a former government official and he is regarded as one of the outstanding lawyers in Liechtenstein.

Mr. Burling: Your Honor, I don't wish to clutter the record, but I will ask leave to hand this book to Your Honor.

Mr. Ingoldsby: May we see it first?

(The book having been handed to counsel for plaintiff:)

Mr. Gallagher: Do you have a translation of this?

731 Mr. Burling: No. You don't need one.

Mr. Gallagher: Do you want to put the last sheet in?

Mr. Burling: I wish to show His Honor the last sheet.

(The matter referred to was handed up.)

By Mr. Burling:

Q. Will you examine Section 14 of the Liechtensteinian citizenship law for a moment? A. Yes.

Q. Will you see if I translate correctly—

"The Government or an agency authorized by it shall accept the oath after citizenship has been granted."

"The oath of citizenship shall be"—

A. I can't translate it so fast.

Q. I see. A. You see clearly expressed here, Mr. Burling, that the oath has nothing to do with the naturalization.

Q. Will you translate it? A. It is only an additional device which can be taken or cannot be taken. It is entirely up to the government what they do, and it clearly states that all females are exempt from it.

Q. Doesn't it provide that males of age are not exempt from it? A. I cannot tell you in detail what their 732 customs and rules are.

Q. What is your real name, in full? A. Fritz von Opel.

Q. Isn't it Baron Fritz von Opel? A. No, sir.

Q. Have you ever held yourself out to be a Baron? A. No, sir; I protested it wherever I could.

Q. Isn't it the fact that you repeatedly were addressed as Baron, by business associates? A. No. Many people, for instance, if you will read Miami or Palm Beach newspapers, you will see they always make over any Europeans; they make a "count" or "Baron" out of it. It is a kind of nobility, and if people want to be polite they can even address you as Baron, and it isn't very wrong because it is the lowest rank of nobility.

Q. I show you Defendant's Exhibit 34-A and ask you if it refreshes your recollection as to whether business associates addressed you as "Baron". It begins, in English, "My Dear Baron", doesn't it? A. Yes, it does.

Q. And did you receive that letter? A. I can't remember it, but it is perfectly possible.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

733 (The document referred to was marked and received in evidence as Defendant's Exhibit 34-A.)

The Witness: As I told you, it is a polite way of addressing people of nobility.

By Mr. Burling:

Q. I show you Defendant's Exhibit 35-A and ask you that refreshes your recollection as to whether you were ever addressed as "Baron" by business associates? A. Yes, that is again a letter of Dr. Henggeler. If you compare those letters, written before 1936, or I would say 1935, you will see it was given up by Dr. Henggeler, on my wish.

Q. But at any rate Dr. Henggeler in 1934 corresponded with you as "My Dear Baron"? A. Yes, until I protested to him and said he should leave this monkey business out.

Mr. Ingoldsby: Are these offered only as proof of the fact that he was addressed as "Baron"?

Mr. Burling: That is right. These documents are offered only for the salutation. In each case it is "My Dear Baron".

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 35-A.)

The Witness: At the enemy alien hearings in Miami, I formally protested the misuse of this word "Baron."

734

Br. Mr. Burling:

Q. Isn't it true you quite commonly told people you were "Baron" until the year 1940 or 1941, until which time or at which time your attorney, Mr. Isadore Kressel, said to you, in words or in substance, "This Baron stuff doesn't go over very well in America, and I advise you to drop it"?

A. I do not remember it, Mr. Burling. That is fantastic, because I never used this title, and my name, which was quite famous in sports world, was always good enough for me—Fritz von Opel, manufacturer of households goods.

Q. Did you ever tell anyone Mr. Isadore Kressel or any other lawyer had ever told you to abandon the use of the title "Baron"?

Mr. Gallagher: We object, Your Honor, to that line of questioning.

On what basis are you asking that, Mr. Burling?

Mr. Burling: It will be shown in the next question.

Mr. Gallagher: I want you to particularize it before we answer it.

The Court: What is the question?

The Reporter (reading): "Question: Did you ever tell anyone Mr. Isadore Kressel or any other lawyer had ever told you to abandon the use of the title Baron?"

The Witness: I never used this title; so there was no reason for anybody to advise me differently.

735

By Mr. Burling:

Q. So that the answer to my question is no? Is that correct? A. I am not aware I ever used this title on my own.

Q. Are you unable to answer my question? A. Would you please repeat it?

Q. Did you ever tell anyone that your lawyer, or in particular Mr. Isadore Kressel, had advised you to abandon the use of the title "Baron"? A. That seems hardly possible, Mr. Burling.

Q. Did you ever tell Mr. J. Mason Haughland? A. I never used this title.

Q. Did you ever tell Mr. J. Mason Haughland that Isadore Kressel or some other lawyer had advised you to drop the use of the title "Baron"? A. It is fully impossible, because I never used this title. So there never was any reason for me to tell anybody that anybody else advised me about it.

Q. Whether or not there was a reason, did you tell Mr. Haughland that? A. Never.

Q. Thank you. Have you ever bribed any official in any country? A. I am not aware of this fact, Mr. Burling.

Mr. Gallagher: We will have to ask Mr. Burling to 736 particularize on that question, again, Your Honor.

Mr. Burling: I have a right, I submit, Your Honor, to ask a general question and then come to the particular question.

The Court: I think a bribery of any person would be too remote. I sustain the objection to that.

Mr. Burling: Your Honor, I offer it on two grounds: One, the witness has previously testified inconsistently

concerning bribery, and his inconsistent testimony goes to his credibility.

The Court: Well, I am not going to try a bribery case here—not unless you bring it in with something connected with this case. I will have to sustain the objection, on the ground it is general.

Mr. Burling: But, if Your Honor please, the principal purpose of this is to show a series of inconsistent statements concerning bribery, made under oath, which goes directly to credibility, I submit.

The Court: You will have to give me authorities on that.

Mr. Burling: If I can show that the witness has testified under oath, or testified to Government interrogators with two diametrically opposite stories concerning a particular incident involving bribery, then one of those must be false.

The Court: Well, it would not be proper cross examination anyway. If you prove that independently, I
737. will consider it.

Mr. Burling: The independent proof would be to ask him if he did not testify concerning certain matters.

The Court: I don't follow you at all. You say you want to prove by some other witness that he testified?

Mr. Burling: No, Your Honor. I have statements from this witness which it is impossible to reconcile; so that one of them or the other of them must be false. And I say that goes to the general credibility of the witness.

The Court: You mean with respect to bribery?

Mr. Burling: No, with regard to any issue. If this man testified one way at one time, and another way at another time—

The Court: With regard to this case?

Mr. Burling: The bribery relates to the proceedings which are the subject of the stipulation this morning, Your Honor.

The Court: The proceedings where?

Mr. Burling: The German proceedings, the subject of the argument before Your Honor at the close of yesterday's session, and the subject of the stipulation which Mr. Gallagher read this morning, that there was a proceeding in Germany as a result of which a fine of three and a half million reichsmarks was imposed on this witness' father.

The Court: And you want to bring that out in this
738 proceeding, that this man was guilty of bribery?

Is that it?

Mr. Burling: No, Your Honor. I want to bring out that this man subsequently has told diametrically opposite stories concerning bribery in those proceedings, for the purpose, and for the sole purpose, of showing that he has testified in inconsistent patterns, so that some of his testimony must have been false. And I say that any showing of false testimony goes to his credibility.

Mr. Ingoldsby: May I be heard on that, Your Honor?

The Court: Yes.

Mr. Ingoldsby: Your Honor, if the credibility of the witness—or let me put it this way:

If Mr. Burling is attempting to show the lack of credibility of the witness, because of the offensive bribery, then of course there are very definite rules governing how that shall be shown. But I don't think he will contend for one moment there was ever any conviction, or that there was evidence of any bribery.

All he wants to examine concerning at this time, apparently from what he says, is two inconsistent statements.

If I might make my point clear, because I think it will undoubtedly arise in connection with further cross examination of this witness, I would like to state that Mr. von Opel is about 49 years of age. You can see from
739 the testimony so far how involved his activities have been, in taxes, in gifts, in business, and in a thousand and one things.

And I very definitely submit to Your Honor that it is

inconsistent to take every return which has ever been filed and try and show that one is inconsistent with the other, for example.

The Court: That doesn't go to the admissibility of it, the age of a transaction. I am perfectly willing to have you gentlemen present authorities on it, if it is that important. I don't recall that we have stopped the trial of a case to prove inconsistent statements in regard to disconnected matters. That is my recollection. If you have authorities on it, and it is important, I will be glad to hear you.

Mr. Burling: These matters are not disconnected, if Your Honor please.

The Court: That is what I want to find out. You started out to ask him, and the question was objected to, if he ever made a statement admitting bribing anybody; and I sustained the objection to that question as too general and too remote. If you will let me know, at the conclusion of this recess, the questions you want to ask, and show the connection, and present to me the authorities I lack to let you go on to prove prior inconsistent statements in regard to other matters in order to impeach his credibility, I will be glad to hear you on that.

I have to go to a meeting of the Court in General Term; but I think I will be back at 2 o'clock, or, if not, perhaps five minutes later. But you can make it 2 o'clock.

(Accordingly, at 12:25 p.m. the luncheon recess was taken until 2 o'clock.)

AFTERNOON SESSION

Mr. Burling: If Your Honor please, I desire at this time to withdraw the question to which objection was

made, without prejudice to my re-introducing it tomorrow, if we can find authority tonight.

The Court: All right. I have had my law clerk do a little research on it, but I have had such a lengthy session with the Court that I haven't had a chance to look into it myself. So that will be all right.

Mr. Burling: I am not going back in general to this topic, Your Honor. But I find I omitted one question on the subject of Liechtenstein.

The Court: All right.

By Mr. Burling:

Q. Is it not a fact, Mr. von Opel, that in the process of acquiring Liechtenstein nationality there was a special act of the Liechtensteinian Legislature enacted? A. Yes, sir.

741. Q. What does the address Hohenzollern Strasse 6 in Berlin mean to you? A. I don't remember this address.

The Court (to the witness): What did you say?

The Witness: I don't remember the address, Your Honor.

By Mr. Burling:

Q. Do you know whether or not it is a fact that there was a street in Berlin called "Hohenzollern Strasse," the name of which was changed to "Graf Spee Strasse"? A. That is possible.

Q. Have you ever or frequently been at either 6 or 12, at Hohenzollern Strasse or Graf Spee Strasse? A. I don't remember those street names, Mr. Burling.

Q. You do not recall either address? A. No.

Q. And you never had an apartment in a building having one of those addresses? A. I don't remember it. It is perfectly possible that friends of mine lived there, which I visited.